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Monday
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Monday
June 18, 1990



Estimate Report

ESTIMATE REPORT: This report provides a detailed analysis of the financial performance of the organization for the period ending June 30, 1990. The report is prepared by the Finance Department and is intended for the use of the Board of Directors and the Executive Management.

The report is organized into several sections, including a summary of the overall financial position, a detailed breakdown of the income statement, and a comparison of actual results with the budget. The summary section provides a high-level overview of the organization's financial health, while the detailed sections provide the data and analysis needed to understand the underlying trends and factors.

The income statement shows that the organization has achieved a significant increase in revenue compared to the previous period, primarily due to the successful completion of several major projects. However, there has also been a corresponding increase in expenses, which has resulted in a smaller net income than anticipated.

The budget comparison section highlights the areas where the organization has exceeded or fallen short of its financial goals. While revenue has been met, there are several areas where expenses have exceeded the budget, particularly in the areas of personnel and materials. The report identifies the reasons for these variances and provides recommendations for future budgeting.

In conclusion, the organization's financial performance for the period ending June 30, 1990, has been mixed. While revenue has increased, the increase in expenses has offset some of the gains. The report provides a clear picture of the organization's financial position and offers valuable insights into the factors driving the results.

MEMBERSHIP AND COMING

MEMBERSHIP: The membership of the organization has increased by 15% over the past year, bringing the total number of members to 1,200. This growth is a testament to the organization's commitment to providing high-quality services and its efforts to attract new members.

COMING: The organization is pleased to announce that it will be holding a series of workshops and seminars throughout the summer months. These events are designed to provide members with the opportunity to learn more about the organization's services and to network with other professionals in the field.

For more information about the organization's services and upcoming events, please contact the Membership Department at (555) 123-4567. We look forward to serving you and helping you achieve your goals.



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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

Agriculture Department

See also Animal and Plant Health Inspection Service; Rural Electrification Administration

NOTICES

Committees; establishment, renewal, termination, etc.:
National Arboretum Advisory Council, 24597

Animal and Plant Health Inspection Service

NOTICES

Environmental statements; availability, etc.:
Animal damage control program, 24597

Army Department

NOTICES

Environmental statements; availability, etc.:
Base realignments and closures—
Fort Dix, NJ, et al., 24610

Centers for Disease Control

NOTICES

Grants and cooperative agreements; availability, etc.:
Cancer control projects for farm populations, 24643

Commerce Department

See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:
Thailand, 24603
Textile consultation; review of trade:
Philippines, 24604
Thailand, 24605

Comptroller of the Currency

PROPOSED RULES

Fiduciary powers of national banks and collective investment funds, 24581

Customs Service

PROPOSED RULES

Articles conditionally free, subject to a reduced rate, etc.:
Automotive vehicles and equipment, 24582

Defense Department

See also Army Department

RULES

Records:

DOD newspapers and civilian enterprise publications;
review and reporting system, 24557

NOTICES

Agency information collection activities under OMB review,
24605

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB
review, 24610

Meetings:

Military Personnel Testing Advisory Committee, 24610
Science Board task forces, 24610
(2 documents)

Energy Department

See also Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

NOTICES

Environmental statements; availability, etc.:
Uranium-atomic vapor laser isotope separation (U-AVLIS)
production plant, 24611
Grant and cooperative agreement awards:
Stanford University, 24613
Tubular Ultrasound, 24613
Natural gas exportation and importation:
Enjet Natural Gas Inc., 24618

Energy Research Office

NOTICES

Meetings:

High Energy Physics Advisory Panel, 24618

Environmental Protection Agency

RULES

Acquisition regulations:
Administrative changes, 24578
Air quality implementation plans:
Preparation, adoption, and submittal—
Methods for measurement of PM; correction, 24687

PROPOSED RULES

Air quality implementation plans; approval and
promulgation; various States:
Illinois; public hearing, 24585

Hazardous waste:

Underground storage tanks—
Financial responsibility requirements, 24692

NOTICES

Hazardous waste:

Land disposal restrictions; exemptions—
Chemical Waste Management, Inc., 24629

Superfund program:

Toxic chemical release reporting; community right-to-
know—
Sulfuric acid; petition denial, 24637

Toxic and hazardous substances control:

Polychlorinated biphenyls, commercial storage areas;
financial assurance criteria and mechanisms; citizen's
petition denied, 24638

Executive Office of the President

See Presidential Documents; Trade Representative, Office of
United States

Export Administration Bureau

NOTICES

Export privileges, actions affecting:

Govaerts, Franciscus, et al., 24599

Meetings:

Computer Peripherals, Components, and Related Test
Equipment Technical Advisory Committee, 24599

Federal Aviation Administration**RULES**

Air traffic operating and flight rules:

Helicopters; navigation equipment requirements in terminal control area; visual flight rules operations, 24822

Standard instrument approach procedures, 24554

Transition areas, 24553

VOR Federal airways, 24553

PROPOSED RULES

Transition areas, 24581

NOTICES

Exemption petitions:

America West Airlines, 24681

Federal Deposit Insurance Corporation**NOTICES**

Meetings; Sunshine Act, 24686

Federal Emergency Management Agency**RULES**

Flood elevation determinations:

Alabama et al., 24568

PROPOSED RULES

Flood elevation determinations:

Arkansas et al., 24586

Federal Energy Regulatory Commission**NOTICES**

Electric rate, small power production, and interlocking directorate filings, etc.:

Tampa Electric Co. et al., 24614

Natural gas certificate filings:

Great Lakes Gas Transmission Co. et al., 24615

Applications, hearings, determinations, etc.:

CNG Transmission Corp., 24617

Sea Robin Pipeline Co., 24617

Williston Basin Interstate Pipeline Co., 24618

Federal Reserve System**NOTICES***Applications, hearings, determinations, etc.:*

First Regional Bancorp, Inc., 24640

Federal Trade Commission**NOTICES**

Prohibited trade practices:

Amersham International PLC, 24640

Fish and Wildlife Service**NOTICES**

Endangered and threatened species permit applications, 24668

Marine mammal permit applications, 24669

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:

N-butyl chloride capsules, 24556

Ronnel blocks, 24556

NOTICES

Animal drugs, feeds, and related products:

Agribusiness Marketers, Inc.; approval withdrawn, 24645

Generic Animal Drug and Patent Term Restoration Act—Fifth policy letter; availability, 24645

Moorman Manufacturing Co.; approval withdrawn, 24646

Pesticide residues, action levels; policy statements; correction, 24646

Foreign Assets Control Office**RULES**

Cuban assets control:

Removals, 24556

General Services Administration**NOTICES**

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB review, 24610

Health and Human Services Department

See Centers for Disease Control; Food and Drug

Administration; Health Care Financing Administration; Health Resources and Services Administration; Human Development Services Office

Health Care Financing Administration**RULES**

Medicare:

Non-assigned claims physician liability, 24561

Health Resources and Services Administration**NOTICES**

Grants and cooperative agreements; availability, etc.:

Human immunodeficiency virus (HIV)—

Home and community-based services for Indian tribes and tribal organizations, 24646

Hearings and Appeals Office, Energy Department**NOTICES**

Decisions and orders, 24618, 24621

(2 documents)

Special refund procedures; implementation, 24624

Housing and Urban Development Department**RULES**

Public and Indian housing:

Consolidated program; change from loan funding to grant funding, 24722

NOTICES

Grants and cooperative agreements; availability, etc.:

Public and Indian housing—

Indian housing development, 24832

Public housing development and obsolete public housing major reconstruction programs, 24816

Human Development Services Office**NOTICES**

Grants and cooperative agreements; availability, etc.:

Head Start-State collaboration projects, 24838

Homeless youth; transitional living program, 24647

Meetings:

Child Abuse and Neglect Advisory Board, 24647

Indian Affairs Bureau**NOTICES**

Liquor and tobacco sale or distribution ordinance:

Ysleta Del Sur Pueblo Tribe, TX, 24666

Interior Department

See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau

International Trade Administration**NOTICES***Applications, hearings, determinations, etc.:*

University of Nebraska et al., 24601

University of Texas et al., 24602

Interstate Commerce Commission

NOTICES

Railroad services abandonment:

Norfolk & Western Railway Co., 24669, 24670
(2 documents)

Southern Pacific Transportation, Inc., 24670, 24671
(3 documents)

Justice Department

See National Institute of Corrections

Land Management Bureau

NOTICES

Realty actions; sales, leases, etc.:

New Mexico, 24668

Legal Services Corporation

NOTICES

Meetings; Sunshine Act, 24686

Maritime Administration

NOTICES

War risk insurance:

Ship value determinations, 24681

National Aeronautics and Space Administration

NOTICES

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB
review, 24670

Meetings:

Aeronautics Advisory Committee, 24672

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Institute of Corrections

NOTICES

Meetings:

Advisory Board, 24672

National Oceanic and Atmospheric Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

Dean John A. Knauss Marine Policy Fellowship, 24828

Meetings:

Mid-Atlantic Fishery Management Council, 24603

North Pacific Fishery Management Council, 24603

Neighborhood Reinvestment Corporation

NOTICES

Meetings; Sunshine Act, 24686

Nuclear Regulatory Commission

NOTICES

Meetings:

Early input to part 20 regulatory guide development effort,
24672

Senior Executive Service:

Performance Review Board; membership, 24673

Applications, hearings, determinations, etc.:

Houston Lighting & Power Co. et al., 24673

Yankee Atomic Electric Co., 24674

Office of United States Trade Representative

See Trade Representative, Office of United States

Personnel Management Office

NOTICES

Pacer Share (Federal productivity enhancement program);
alternative personnel management system;
administrative project, 24675

Postal Service

RULES

Domestic Mail Manual:

Miscellaneous amendments, 24560

Presidential Documents

PROCLAMATIONS

Special observances:

Baltic Freedom Day (Proc. 6146), 24549

Father's Day (Proc. 6147), 24551

Flag Day and National Flag Week (Proc. 6145), 24547

Public Health Service

See Centers for Disease Control; Food and Drug
Administration; Health Resources and Services
Administration

Rural Electrification Administration

NOTICES

Environmental statements; availability, etc.:

Oglethorpe Power Corp., 24598

Securities and Exchange Commission

NOTICES

Self-regulatory organizations; proposed rule changes:

Delta Government Options Corp., 24676

Self-regulatory organizations; unlisted trading privileges:

Midwest Stock Exchange, Inc., 24677

Pacific Stock Exchange, Inc., 24677

Philadelphia Stock Exchange, Inc., 24678

Applications, hearings, determinations, etc.:

National Tax Credit Investors II et al., 24678

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Trade Representative, Office of United States

NOTICES

Advisory committees; closed meetings; determination, 24675

Transportation Department

See Federal Aviation Administration; Maritime
Administration

Treasury Department

See Comptroller of the Currency; Customs Service; Foreign
Assets Control Office

Separate Parts in This Issue

Part II

Environmental Protection Agency, 24692

Part III

Department of Housing and Urban Development, 24722

Part IV

Department of Housing and Urban Development, 24810

Part V

Department of Transportation, Federal Aviation
Administration, 24822

Part VI

Department of Commerce, National Oceanic and
Atmospheric Administration, 24828

Part VII

Department of Housing and Urban Development, 24832

Part VIII

Department of Health and Human Services, Office of
Human Development Services, 24838

Reader Aids

Additional information, including a list of public
laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in
the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

6145.....24547
6146.....24549
6147.....24551

12 CFR**Proposed Rules:**

9.....24581

14 CFR

71 (2 documents).....24553
91.....24822
97.....24554

Proposed Rules:

71.....24581

19 CFR**Proposed Rules:**

10.....24582

21 CFR

520 (2 documents).....24556

24 CFR

905.....24722

31 CFR

515.....24556

32 CFR

202.....24557
297.....24557

39 CFR

111.....24560

40 CFR

51.....24687

Proposed Rules:

52.....24585
280.....24692

42 CFR

400.....24561
411.....24561

44 CFR

67.....24568

Proposed Rules:

67.....24586

48 CFR

1501.....24578
1502.....24578
1503.....24578
1506.....24578
1509.....24578
1510.....24578
1514.....24578
1515.....24578
1516.....24578
1517.....24578
1519.....24578
1522.....24578
1530.....24578
1531.....24578
1532.....24578
1533.....24578
1536.....24578
1545.....24578

Presidential Documents

Title 3—

Proclamation 6145 of June 14, 1990

The President

Flag Day and National Flag Week, 1990

By the President of the United States of America

A Proclamation

Of all the images and symbols that have come to represent the United States, from the towering figure of Uncle Sam to the beautiful yet fearsome bald eagle, the flag occupies a unique place in our hearts and in our history. It is our Nation's greatest emblem, the standard carried into battle by generations of brave and selfless Americans. As a tangible reminder of their great sacrifices, and as a symbol of the freedom with which we have been blessed, it is a banner we raise with a duly profound sense of pride and reverence.

The flag officially took shape on June 14, 1777, when the delegates to the Continental Congress resolved "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the Union be thirteen stars, white in a blue field, representing a new constellation." However, the Stars and Stripes had acquired meaning months earlier, when our Founding Fathers boldly affirmed the rights of individuals and declared America's independence from Great Britain. The "new constellation" of which the Continental Congress spoke was our young Nation, a nation where "freedom's holy light" would gleam forth, giving hope to all those living in the darkness of tyranny and serving as a guide to all those charting their own course toward liberty and self-government.

Today, in quiet glory, the Stars and Stripes continue to proclaim the shining promise of America. For millions of people around the world, the flag has bid welcome, marking a place of refuge from religious and political persecution. For millions of others, it has represented the liberty to which all men are heirs. When we look to the Red, White, and Blue, we cannot fail to take pride in the respect accorded to our flag around the world.

Our Nation's flag emerged from the triumphant struggle to represent the idea "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." One individual who recognized the importance of that struggle to all mankind was the Marquis de Lafayette. This courageous Frenchman understood that, because liberty is the God-given right of all men, the cause of freedom is universal. He eagerly joined in the American Revolution and, on July 31, 1777, was appointed a Major General by the Continental Congress. Time and again throughout the Revolutionary War, Lafayette proved his bravery and his love of freedom. Shortly after the war's conclusion, he described its significance with these joyous words: "America is assured her independence; mankind's cause is won, and liberty is no longer homeless on earth."

Following his death in 1834, Lafayette was buried in the Picpus Cemetery in Paris, beneath American soil, as he had requested. On the Fourth of July just 6 weeks after his death, an American flag was raised above his grave. It is reported to have flown their continuously ever since, even during the German occupation of France during World War II.

Today the flag that flies over the grave of our dear friend, Lafayette, continues to serve as a reminder that the cause of liberty and democratic government is universal. Indeed, as Lafayette knew so well, "freedom's holy light" can never be extinguished because God has given it a home in every human heart.

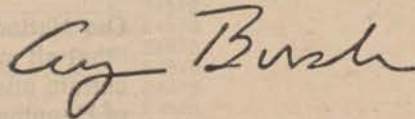
Wherever we look to Old Glory today—whether in our schools, in our courts of law, or at isolated military installations thousands of miles from these shores—may all of us be united in our love for this great land of ours. On this joyous occasion, may we also renew our determination to uphold the ideals enshrined in our Constitution and Declaration of Independence, so that the flag might always be the symbol of a nation that is both great and good.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1990, as Flag Day, and the week beginning June 10, 1990, as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week, by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America by having public gatherings and activities at which they can honor their country in an appropriate manner, including publicly reciting the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-14215

Filed 6-14-90; 4:40 p.m.]

Billing code 3195-01-M

Presidential Documents

Proclamation 6148 of June 14, 1990

Baltic Freedom Day, 1990

By the President of the United States of America

A Proclamation

The struggle for Baltic freedom has entered a new era of great promise and hope. The 50-year-long effort by the peoples of Lithuania, Latvia, and Estonia to regain freedom and democracy has begun to bear fruit.

The international community has long decried the dark summer of 1940 when, as a result of a self-serving agreement made earlier by Hitler and Stalin in the Molotov-Ribbentrop Pact, the Baltic States were denied their independent status. During that fateful summer, Soviet troops invaded and occupied the Baltic States. The rigged elections that followed put an end to Baltic self-determination.

These events, however, did not end the desire of the Baltic peoples for freedom and independence. During the past year, they have taken major steps toward achieving self-determination. Generally free and fair elections based on a vigorous multiparty political system produced popular legislatures. In decisions reflecting the will of the Baltic peoples, Lithuania, Estonia, and Latvia have asserted their intention to restore their independence. The representatives of the Baltic peoples have taken a nonviolent path and have consistently appealed for dialogue and negotiations with Moscow.

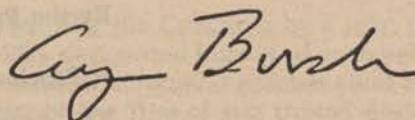
For 50 years the United States has refused to recognize the forced incorporation of the Baltic States into the Soviet Union. As I assured the Prime Minister of Lithuania during her recent visit, the United States will remain faithful to this policy. We support self-determination for the Baltic peoples, and we call upon the Soviet Union to enter a good-faith dialogue with representatives of the Baltic governments who received popular mandates in free and fair elections. We are encouraged by recent steps in that direction and hope that a full and productive dialogue will materialize.

The right to liberty and self-determination; free and fair elections; a better life for themselves and for their children—these are the just aspirations of the people of Estonia, Latvia, and Lithuania. On this Baltic Freedom Day, we reaffirm our support for them.

The Congress, by Senate Joint Resolution 251, has designated June 14, 1990, as "Baltic Freedom Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1990, as Baltic Freedom Day. I call upon the people of the United States of America to observe this day with appropriate remembrances and ceremonies to reaffirm their commitment to principles of freedom and liberty for all oppressed people.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-14230

Filed 6-15-90; 11:12 am]

Billing code 3195-01-M

Presidential Documents

Proclamation 6147 of June 14, 1990

Father's Day, 1990

By the President of the United States of America

A Proclamation

Each year, on the third Sunday in June, we pause to honor our fathers and to express our gratitude for their generosity and devotion. Father's Day is more than a day rich in family love and tradition—it is also a day when we are deeply mindful of the many ways fathers strengthen our communities and Nation.

As children, we cannot fully fathom the depth of our father's love for us. Neither can we fully realize the weight of his responsibilities. Children cherish their father's affection and attention, as well as the time they spend together—be it playing a favorite game, assembling a kite or train set, or discovering the wonders of books, history, and nature. Rarely do they perceive in their father's tender gaze the worries, frustrations, and concerns that have ever been a part of parenting.

When a child is hurt or sick, he knows only that there is comfort and reassurance in his father's warm embrace. He cannot know the quiet heartache of the man who would, if it were somehow possible, gladly suffer in his stead. When a child says goodbye on his first day of school, or learns how to ride a bike for the first time, he hears only the encouragement and pride in his father's voice. He cannot hear his father's unspoken prayers for his safety and well-being on the many journeys that lie ahead.

Eager to protect, nurture, and provide for his children, a father constantly gives of himself, always striving to do his best and always hoping that his best will be enough. As we grow older, we cannot fail to recognize this love and selflessness as the essence of fatherhood.

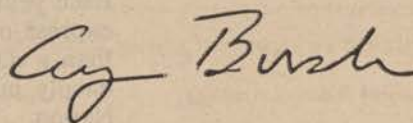
With each passing year, and especially as we have children of our own, we become ever more grateful for our father's love and discipline, and for the many sacrifices he has made for our sake. We begin to see clearly how being a father requires faith and fortitude, and we begin to understand the enormous responsibility shouldered by one of our dearest friends and teachers.

Through their dad, young people learn important lessons about love and commitment, duty and fidelity, and respect and concern for others. The importance of his example cannot be overstated, because the man who is faithful, giving, and forgiving also teaches his children powerful lessons about the One who is the just and loving Father of us all.

Because children remember these lessons for a lifetime, and because these lessons influence their behavior as members of a larger community, fathers play a very important role in shaping the character of our Nation. Today we thank dads everywhere for all they do, throughout the year, for our families and country.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 17, 1990, as Father's Day. I invite the States and communities and people of the United States to observe that day with appropriate ceremonies as a mark of appreciation and abiding affection for their fathers. I direct government officials to display the flag of the United States on all Federal Government buildings, and I urge all Americans to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-14240

Filed 6-15-90; 11:42 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ANM-18]

Alteration of VOR Federal Airway V-160; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-160 located between Blue Mesa, CO, and Denver, CO. The realignment of this airway will increase air traffic control efficiency in the Denver area while reducing controller verbiage. This action will help expedite traffic arriving and departing the Denver area and reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On February 21, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-160 located between Blue Mesa, CO, and Denver, CO (55 FR 6009).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters VOR Federal Airway V-160 located between Blue Mesa, CO, and Denver, CO. The realignment of this airway will increase air traffic control efficiency in the Denver area while reducing controller verbiage. This action will help expedite traffic arriving and departing the Denver area and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-160 [Amended]

By removing the words "From INT Blue Mesa, CO," and substituting the words "From Blue Mesa, CO, INT Blue Mesa"

Issued in Washington, DC, on June 6, 1990.

Signed by Harold W. Becker,
Manager, Airspace-Rules and Aeronautical
Information Division.

[FR Doc. 90-14000 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-6]

Revision of Transition Area, Charleston, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Charleston, SC, transition area. This action will enlarge the existing Charleston, SC, transition area to encompass the East Cooper Airport at Mt. Pleasant, SC. A standard instrument approach procedure (SIAP) has been developed to serve the East Cooper Airport based on the Charleston VHF omnidirectional range/distance measuring equipment (VOR/DME). This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the East Cooper Airport in order to provide airspace protection for instrument flight rules (IFR) aeronautical operations. The operating status of the East Cooper Airport will be changed from visual flight rules (VFR) to IFR concurrent with publication of the VOR/DME SIAP. Also, the name of the Charleston AFB/Municipal Airport is corrected to Charleston AFB/International Airport. Also, minor corrections are made in the latitude/longitude coordinate position of the Charleston AFB/International Airport, Charleston Executive Airport and the Johns Island Radio beacon (RBN).

EFFECTIVE DATE: 0901 U.t.c., September 20, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic

Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On April 12, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Charleston, SC, transition area (55 FR 13802). The transition area would be enlarged to include the Mt. Pleasant, SC, East Cooper Airport and change its operating status from VFR to IFR. Also, the name of the Charleston AFB/Municipal Airport would be changed to Charleston AFB/International Airport. Additionally, minor corrections would be made in the latitude/longitude coordinate position of the Charleston AFB/International Airport, the Charleston Executive Airport and the Johns Island RBN. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Charleston, SC, transition area to include the East Cooper Airport at Mt. Pleasant, SC. The base of controlled airspace is lowered from 1200 to 700 feet above the surface in the vicinity of the East Cooper Airport to provide airspace protection for IFR aircraft executing a planned VOR/DME SIAP. The operating status of the airport will be changed to IFR concurrent with publication of the standard instrument approach procedure. Also, the name of the Charleston AFB/Municipal Airport is corrected to Charleston AFB/International Airport. Additionally, minor corrections are made in the latitude/longitude coordinate positions of the Charleston, AFB/International Airport, Charleston Executive Airport and the Johns Island RBN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Charleston, S.C. [Revised].

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Charleston, AFB/International Airport (latitude 32°53'55" N., longitude 80°02'27" W.); within 3.5 miles each side of the Charleston VORTAC 018°, 211°, and 332° radials, extending from the 9-mile radius area to 11.5 miles north, southwest and northwest of the VORTAC; within 3.5 miles each side of the Charleston VORTAC 135° radial, extending from the 9-mile radius area to 10.5 miles southeast of the VORTAC; within a 6.5-mile radius of Charleston Executive Airport (latitude 32°42'03" N., longitude 80°00'10" W.); within 3 miles each side of the 278° bearing from the Johns Island NDB (latitude 32°42'04" N., longitude 80°00'21" W.), extending from the 6.5-mile radius area to 8.5 miles west of the NDB; within a 7.5-mile radius of the East Cooper Airport (latitude 32°53'44" N., longitude 79°47'00" W.).

Issued in East Point, Georgia, on June 4, 1990.

James G. Walters,

Acting Manager, Air Traffic Div. Southern Region.

[FR Doc. 90-14001 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 2621; Amdt. No. 1428]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-6277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97)

establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and,

where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on June 8, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

PART 97—[AMENDED]

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective August 23, 1990

Canton, GA—Cherokee County Airport, NDB RWY 4, Orig.

Dalton, GA—Dalton Muni, LOC RWY 14, Amdt. 4

Gainesville, GA—Lee Gilmer Memorial, LOC RWY 4, Amdt. 5

Gardner, KS—Gardner Muni, NDB-D, Amdt. 2

Campbellsville, KY—Taylor County, VOR/DME-A, Amdt. 4

Campbellsville, KY—Taylor County, LOC RWY 23, Amdt. 1

Campbellsville, KY—Taylor County, NDB RWY 23, Amdt. 1

Greenville, MS—Greenville Muni, VOR RWY 18R, Amdt. 5

Greenville, MS—Greenville Muni, VOR/DME RWY 18L, Amdt. 12

Albion, NE—Albion Muni, NDB RWY 32, Orig.

Manteo, NC—Dare County Regional, VOR RWY 16, Amdt. 3

Manteo, NC—Dare County Regional, NDB RWY 4, Amdt. 4

Manteo, NC—Dare County Regional, NDB RWY 16, Amdt. 4

Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 4

Morganton, NC—Morganton-Lenoir, NDB RWY 3, Amdt. 4

Morganton, NC—Morganton-Lenoir, RNAV RWY 3, Amdt. 3

Shelby, NC—Shelby Muni, NDB RWY 5, Amdt. 4

Southern Pines, NC—Moore County, VOR-A, Amdt. 3

Southern Pines, NC—Moore County, LOC RWY 5, Amdt. 5

Southern Pines, NC—Moore County, RNAV RWY 23, Amdt. 3

Pauls Valley, OK—Pauls Valley Muni, NDB RWY 35, Amdt. 1

Camden, SC—Woodward Field, VOR/DME-A, Amdt. 3

Camden, SC—Woodward Field, NDB RWY 23, Amdt. 6

Greenville, SC—Donaldson Center, NDB RWY 4, Amdt. 4

Greenville, SC—Donaldson Center, ILS RWY 4, Amdt. 2

Nashville, TN—John C. Tune, LOC/DME RWY 19, Amdt. 1

Carriazo Springs, TX—Dimmit County, NDB RWY 31, Amdt. 2

* * * Effective July 26, 1990

St. Paul, MN—St. Paul Downtown Holman Field, ILS RWY 32, Amdt. 3

St. Louis, MO—Spirit of St. Louis, ILS RWY 8R, Amdt. 11

Cleveland, OH—Burke Lakefront, LOC RWY 24R, Amdt. 8

Youngstown, OH—Youngstown Muni, VOR RWY 19, Amdt. 18

Youngstown, OH—Youngstown Muni, NDB RWY 32, Amdt. 18

Youngstown, OH—Youngstown Muni, ILS RWY 14, Amdt. 5

Youngstown, OH—Youngstown Muni, ILS RWY 32, Amdt. 24

Youngstown, OH—Youngstown Muni, RADAR-1, Amdt. 11

Roanoke, VA—Roanoke Regional/Woodrum Field, VOR RWY 33, Amdt. 7

Roanoke, VA—Roanoke Regional/Woodrum Field, VOR/DME-A, Amdt. 4

Roanoke, VA—Roanoke Regional/Woodrum Field, LDA RWY 6, Amdt. 7

Roanoke, VA—Roanoke Regional/Woodrum Field, NDB RWY 33, Amdt. 9

Roanoke, VA—Roanoke Regional/Woodrum Field, ILS RWY 33, Amdt. 10

Cheyenne, WY—Cheyenne, ILS RWY 28,
Amdt. 32

* * * Effective June 28, 1990

Burbank, CA—Burbank-Glendale Pasadena,
ILS RWY 8, Amdt. 34

Orlando, FL—Orlando Intl, ILS RWY 17,
Amdt. 1

Orlando, FL—Orlando Intl, ILS RWY 35,
Amdt. 1

* * * Effective June 1, 1990

Renton, WA—Renton Muni, NDB RWY 15,
Amdt. 1

[FR Doc. 90-14002 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; N-Butyl Chloride Capsules

AGENCY: Food and Drug Administration,
HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Agribusiness Marketers, Inc. The NADA provides for the use of *n*-butyl chloride capsules for the removal of ascarids and hookworms from dogs. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 92-481, held by Agribusiness Marketers, Inc. The NADA provides for the use of *n*-butyl chloride capsules for the removal of ascarids and hookworms from dogs. By letter dated October 24, 1989, the sponsor requested the agency to withdraw the approval because the product is not being manufactured or marketed. This document amends 21 CFR 520.260(b)(2) by removing the firm sponsor number.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.260 [Amended]

2. Section 520.260 is amended in paragraph (b)(2) by removing the phrase "Nos. 015563 and" and inserting in its place "No."

Dated: June 8, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-13963 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ronnel Blocks

AGENCY: Food and Drug Administration,
HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Moorman Manufacturing Co. The NADA provides for use of a medicated block containing ronnel for control of hornflies and grubs on cattle. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 13-450 held by Moorman Manufacturing Co. The NADA provides for use of a medicated block containing ronnel for control of hornflies and grubs on cattle.

By letter dated October 6, 1989, the sponsor requested the withdrawal of approval because the product is not being manufactured or marketed. This document removes 21 CFR 520.2080a, which reflects the approval of the NADA.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2080a [Removed]

2. Section 520.2080a *Ronnel blocks* is removed.

Dated: June 11, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-13964 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Removal From List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets
Control, Department of the Treasury.

ACTION: Notice of removal from the list of Specially Designated Nationals (Cuba).

SUMMARY: This notice removes Hotel Suites Alvear and Melo y Cia., both of Panama, from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR part 515).

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control. Tel: (202) 376-0400. Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Pursuant to the Cuban Assets Control Regulations (31 CFR part 515), Hotel Suites Alvear, Panama, and Melo y Cia., Panama, were listed in the Federal Register on October 31, 1989 (54 FR 45730). It has been determined that these companies no longer come within the scope of the definition of a "specially designated national" as defined in § 515.306 of the Regulations; and, therefore, they are removed from the list of Specially Designated Nationals.

Specially Designated Nationals of Cuba, Removals

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), March 7, 1989 (54 FR 9431), April 10, 1989 (54 FR 32064), September 20, 1989 (54 FR 38810), October 31, 1989 (54 FR 45730), November 29, 1989 (54 FR 49258), January 26, 1990 (55 FR 2644) and April 2, 1990 (55 FR 12172), is amended by removing the names:

Hotel Suites Alvear, Panama
Melo y Cia., Panama

Dated: June 4, 1990.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: June 6, 1990.

Peter K. Nunez,
Assistant Secretary (Enforcement).
[FR Doc. 90-14021 Filed 6-13-90; 12:33 pm]
BILLING CODE 4810-01-M

DEPARTMENT OF DEFENSE

32 CFR Parts 202 and 297

[DoD Instruction 5120.4]

RIN 0790-AA56

DoD Newspapers and Civilian Enterprise Publications

AGENCY: American Forces Information Service, DoD.

ACTION: Final rule.

SUMMARY: This rule provides supplementary information on the background of DoD Civilian Enterprise (CE) newspapers; summarizes public comments received to the Department of Defense's proposed rule published on November 3, 1989 (54 FR 212, pp. 46420-46422), regarding proposed changes to its regulation on DoD newspapers and CE publications; presents DoD conclusions regarding the comments; and publishes the final rule. This final rule also includes an earlier administrative change to DoD Instruction 5120.4 which implemented

Public Law 100-497 (the Indian Gaming Regulatory Act), and includes further corrections made necessary by the proposed changes. In addition, 32 CFR is amended by removing part 202, which was rendered obsolete with the publication of part 297.

EFFECTIVE DATE: June 18, 1990.

ADDRESSES: Department of Defense, American Forces Information Service, 601 N. Fairfax Street, #311, Alexandria, VA 22314-2007.

FOR FURTHER INFORMATION CONTACT: Colonel H. G. Baker, USAF, telephone (202) 274-4868.

SUPPLEMENTARY INFORMATION: Common policies governing the publication on military service newspapers were first published as a DoD Regulation on September 21, 1954 (DoD Instruction 5120.4). The Regulation also prescribed general guidelines for agreements with civilian firms to provide commercial publications, similar to service newspapers, at installations where funds were not available for a service newspaper. While both editorial and advertising content were the responsibility of the publisher, a commanding officer could prohibit circulation of an issue within the command if it contained material considered in bad taste, detrimental to discipline, subversive, or otherwise contrary to the best interests of the command. Military members could not be listed as part of the editorial or administrative staffs of a CE newspaper, but could be given bylines on stories released through normal public information channels. And all such stories were equally available to any other commercial publisher who requested them. The essence of the agreement with the designated CE publisher was that of preferential distribution. Further, this initial Regulation emphasized that CE newspapers could not contain any material which implied in any manner that the Government endorsed or favored any specific commercial product, commodity, or service.

By 1970, in an evolving concept, the fourth version of DoD Instruction 5120.4 recognized for the first time that the function of designated CE newspapers was to support internal information programs of the military services and defense agencies by providing service and local news not readily available through other commercial media. And the revised Instruction opened the way for command representatives to "suggest the positioning of editorial matter and military photographs" in CE newspapers. While continuing to state that CE publications were not subject to

military control with respect to content, the revision placed restrictions on the editorial content and advertising policy of CE newspapers:

- No CE newspaper could contain any campaign news or editorials dealing with candidates or issues;
- Any CE newspaper which carried paid political advertisements must afford equal opportunity to all opposing parties or candidates;
- No CE newspaper could conduct a poll, survey or straw vote relating to a political campaign;
- No CE newspaper could carry any advertisement which implied discrimination against any person because of race, religion, national origin, or sex.

The preceding restrictions were continued in a revision to DoD Instruction 5120.4 dated March 15, 1973. However, with the publication of the current edition of the Regulation, dated November 14, 1984, a fundamental shift in policy concerning CE newspapers became effective. Major changes:

- Recognized CE newspapers as authorized publications, with editorial content as the responsibility of the command;
- Encouraged the establishment of CE newspapers, where feasible, as the first choice for a command information newspaper;
- Established the right of the CE newspaper to first use of editorial content.

The restriction on political advertising was reworded to state, "CE newspapers may carry paid political advertisements by legitimate candidates or parties, provided equal opportunity to advertise is afforded." That restriction was reevaluated in 1987 when DoD officials realized that (1) There was no recognized definition of "legitimate" candidates or parties; (2) paid political advertisements might give the impression of DoD endorsement; and (3) the potential use of CE newspapers as an advertising forum by extremist candidates or parties would be inimical to the mission and purpose of CE newspapers. An interim change to DoD Instruction 5120.4 was issued on October 15, 1987, which prohibits all paid political advertising in CE newspapers. This interim change is included in the proposed rule change published November 3, 1989 (54 FR 46420-46422), for public comment.

Two letters of comment were received, one from a private individual representing a citizens group and one from a law firm representing a private organization devoted to public

advocacy. Both letters are available for inspection and copying at the offices of the American Forces Information Service, 601 N. Fairfax Street, #311, Alexandria, VA 22314-2007. Telephone (202) 274-4868 to arrange for entry.

Summary of Comments

The first letter alleges that the ban on political advertising violates DoD's policy concerning a free flow of news and information to military personnel, and that the intent of the ban is to prevent extremes of political viewpoints from appearing in CE newspapers. Further, the letter declares that CE newspapers are a public forum, and the ban on political advertising violates the constitutional guarantee of freedom of the press.

The second letter also questions the constitutionality of DoD's ban on political advertising, asserting that commercial speech is entitled to First Amendment protection. The letter chides the DoD for not offering a rationale for the change in policy on political advertising. It charges that while the DoD refers to the changes as "minor revisions," in fact the ban on political advertising "would seriously impact on the constitutional rights of both publishers and advertisers."

DoD Reaction

Command information newspapers, whether funded or CE, exist to provide news and information about the DoD, the military services, and the sponsoring command. Such news and information is intended to improve the ability of command members to accomplish the command mission. The newspapers may also carry news and information of local community events and programs which may be of interest to command members. They may not normally carry news and opinion from commercial sources, and may not carry campaign news or editorials dealing with candidates or issues. In short, command information newspapers are local command "house organs;" they are not First Amendment newspapers and are not intended to be the sole source of news and information for members of a command.

The decision to prohibit political advertising eliminates the possibility that a CE publisher, through the selective acceptance of paid political advertising, might appear to endorse a particular candidate or issue, in contrast to a DoD government publication policy that dictates non-endorsement. In spite of disclaimers, the perception of the public and internal audiences might well be that, by permitting paid political advertising, the DoD was endorsing a

particular candidate or issue. By default, the non-appearance of an opposing view could be perceived as DoD non-endorsement. Such policy on political advertising in no way diminishes the free flow of information to DoD personnel, no more so than the editorial prohibition on partisan political news matter required by legislation.

The DoD acknowledges that, because the Regulation on command information newspapers also contains policy on the overseas theater-wide *Stars and Stripes* newspapers, there has been a potential for confusion in the Regulation. The mission of these unique newspapers is fundamentally different from that of command information newspapers. In the absence of adequate commercial newspapers overseas, these daily newspapers provide the free flow of information available in stateside commercial newspapers. They carry the international, U.S. national, and local news of the day from commercial sources, including political news. To eliminate the potential confusion, policies governing the *Stars and Stripes* will be removed from DoD Instruction 5120.4 and published in a separate Regulation.

With regard to the constitutional rights of publishers and advertisers, publishers have the right to set advertising policy for publications under their control. On the other hand, since advertising does not enjoy First Amendment protection, that policy must conform to applicable laws and regulations affecting advertising. Advertisers do not have constitutional rights to access government publications that overrides content policy from many sources. Courts have consistently ruled that the media are not obligated by the First Amendment to carry all proffered advertising.

List of Subjects in 32 CFR Part 297

Government publications,
Newspapers and magazines.

PART 202—[REMOVED]

Accordingly, title 32 of the Code of Federal Regulations is amended by removing part 202 and amending part 297 as follows:

PART 297—[AMENDED]

1. The authority citation for part 297 continues to read as follows:

Authority: 10 U.S.C. 121 and 133.

2. The table of contents is amended by:

a. Adding a new Appendix F as follows:

Appendix F to Part 297—DoD Command Newspaper Review System

b. Redesignating enclosures 1 through 5 as Appendix A to part 297 through Appendix E to part 297 respectively.

§ 297.2 [Amended]

3. Section 297.2 is amended by making the following changes: After the words "Military Departments" add the words "(including their National Guard and Reserve Components)", remove the words "the Organization of the Joint Chiefs of Staff" and replace them with "the Joint Staff"

§ 297.5 [Amended]

4. Section 297.5 is amended as follows:

a. Paragraph (b)(8), after the word "may" appears a second time, add the word "not" and remove the words "by legitimate candidates or parties provided equal opportunity to advertise is afforded"

b. Paragraph (c)(1)(iii), change "paragraph (b)(2)(6)(i)(B)" to read "paragraph (b)(6)(i)(B)."

c. Redesignate paragraph (d)(6) as (d)(5)(i) and remove the last sentence beginning with the words "This provision . . ."

d. Add a new paragraph (d)(5)(ii) as follows:

§ 297.5 Procedures.

* * * * *

(d) * * *

(5) * * *

(ii) This provision is not intended to prohibit the headquarters of a geographically dispersed command that receives its local coverage in the host installation newspaper from publishing a command-wide newspaper; nor is it intended to prohibit a command that has information needs which are significantly different from the majority of the host installation audience from publishing a separate newspaper, when authorized by the designated approving authority (see Section C. Appendix F).

* * * * *

e. Redesignate paragraph (d)(7) as (d)(6).

f. Paragraph (e), change § 297.5 (d)(1)(i)(F) to read "Section 297.5 (d)(5)."

5. Appendix A to part 297 is amended by revising Section D. as follows:

Appendix A to Part 297—Funded Newspapers

* * * * *

D. Masthead

The masthead shall include the names of the commanding officer and the PAO, and the

names and editorial titles of the staff of the newspaper.

6. Appendix B to part 297 is amended as follows:

a. Section A is revised as follows:

Appendix B to Part 297—Civilian Enterprise Publications

A. Purpose

Civilian Enterprise (CE) publications consist of newspapers, guides, and maps. They support command internal communications. The command provides the editorial content. Commercial publishers sell advertising to cover costs and secure earnings, print the publications, and may make all or part of the distribution. Periodically, commercial publishers compete for contracts to publish these publications. Appropriated or non-appropriated funds may not be used to pay for any part of a commercial publisher's costs incurred in publishing a CE publication.

b. Section D, change § 297.5(b)(5) to § 297.5(b)(6)

c. Paragraph F.4., third sentence, after the word "include" add the words "public affairs."

d. Remove the next sentence: The public affairs officer shall serve as executive secretary and advisor.

e. Paragraph H.3., change § 297.5(b)(5) (i) and (ii) to § 297.5(b)(6)(i) (A) and (B)

f. Section I is revised as follows:

I. Civilian Enterprise Guides and Maps

1. The name of the publication may include the name and emblem of the command or installation.

2. At the discretion of the commander, an installation official telephone directory may be included as a section of a CE guide. The telephone section shall be integral to the guide and not separable. (Separate CE telephone directories are not authorized.) Required communication security (COMSEC) information shall be printed on the first page of the telephone section and not on the cover of the guide. The cover of the guide may notify users that the publication contains the official telephone directory. Publishing contracts shall establish a firm delivery date and ensure control of distribution by the command executing the contract.

3. A CE mission and services pocket guide for transient personnel that contains advertising from businesses in the community whose services may be needed by transients may be contracted for in addition to the installation guide. Normally, these pocket guides will be procured as part of the installation guide contract.

g. Appendix D to part 297 is amended as follows:

In section E after the fourth sentence add a new sentence "An exception also pertains to any gaming conducted by an Indian tribe under the 'Indian Gaming Regulatory Act' (Pub. L. 100-497)"

h. Appendix E to part 297 is amended as follows:

(1) Remove the word "monthly" in paragraphs A.1. and A.2.

(2) Paragraph D.1., change the address to "601 North Fairfax Street, Room 311, Alexandria, VA 22314-2007"

(3) Remove section E.

i. Appendix F is added as follows:

Appendix F to Part 297—DoD Command Newspaper Review System

A. Purpose

The purpose of the DoD command newspaper review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. Policy

DoD newspapers (except those covered by Appendix C) shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. Approving Authorities

1. The Assistant Secretary of Defense (Public Affairs) shall be the approving authority for newspapers published by DoD Components, less the Military Departments.

2. Within the Military Departments, the Secretary or a designated representative shall be the approving authority. This authority may be delegated no lower than the major command or equivalent level.

D. Review Criteria

1. Each newspaper shall be evaluated on the basis of mission essentiality, communication effectiveness, cost effectiveness, and compliance with applicable regulations.

2. In implementing the requirement that only one newspaper is authorized at each installation, any competing needs of an installation and its tenant commands shall be considered (see paragraphs 297.5(d) (i) and (ii) of this part).

E. OSD Command Newspaper Review Board

The OSD Command Newspaper Review Board shall be chaired by the Director, American Forces Information Service (AFIS). Members shall be senior personnel representing functional areas of the command communication process (public affairs, editorial, design and layout, production, etc.). Members shall be drawn from OSD and Defense Agencies, nominated by office and agency heads at the invitation of the chair. A technical advisory panel of relevant specialties (printing, postal, distribution, contracting, legal, etc.) may be established at the discretion of the chair.

1. Recommendations may include the establishment, disestablishment, or continuance of a newspaper; changes in

volume, frequency, format, or paper stock; and cost reduction measures.

2. Recommendations shall have the concurrence of two-thirds of the voting board members.

F. Military Department Command Newspaper Review

Military Departments shall establish appropriate procedures to accomplish command newspaper review and reporting requirements.

G. Appeals

Appeals shall be made within 30 calendar days of the approving authority's decision if publishing activities have new information to present. Representatives of a publishing activity may make presentations to a board and respond to questions during open sessions of the board.

H. Reporting Requirements

1. DoD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated on Attachment 1 of this Appendix for each newspaper published, and four recent copies of the newspaper, to: Director, American Forces Information Service, Attn: Print Media Plans and Policy, 601 N. Fairfax Street, #311, Alexandria, VA 22314-2007.

Requests for approval of new newspapers may be submitted at any time, using the format at Attachment 1 of this Appendix.

2. No later than April 15 of each even numbered year, the Secretary (or designee) of each Military Department shall forward to the ASD(PA) (ATTN: Director, AFIS) a report of the Military Department's review of newspapers. A cover memorandum shall include summary data on total number of newspapers, number eliminated, and total cost for the year being reported, along with a listing of the information indicated in Attachment 2 of this Appendix.

3. One information copy of each issue of all DoD newspapers shall be forwarded on publication date to the address in subsection H.1. of this Appendix.

4. Information copies of CE newspaper contracts shall be forwarded to the address in paragraph H.1. of this Appendix, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the biennial review and reporting of newspapers.

I. Report Control Requirement

The information requirements prescribed in this enclosure are assigned Report Control Symbol DD PA(B1) 1638.

Attachment 1 to Appendix F—Request For Continuation/Establishment of DoD Newspaper

As required by Section H. of this Appendix, the following information shall be provided biennially on newspapers published by DoD Components (less Military Departments), and when requesting approval for a new newspaper:

- Name of Newspaper.
- Publishing command and mailing address.
- Printing arrangement:
 - Government equipment.

2. Government contract with commercial printer.
3. CE contract with commercial printer (give name and mailing address of commercial printer).
- D. Frequency and number of issues per year.
- E. Number of copies printed and estimated readership.
- F. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.
- G. Size of newspaper staff, listed as full time and part time.
- H. Annual costs of:
 1. Editorial and administrative.
 2. Supply and equipment.
 3. Printing (funded only).
 4. Distribution and mailing.
 5. Staff transportation.
- I. Attach four (4) recent copies of newspaper.
- J. For requests for approval of new newspapers:
 1. Provide comprehensive statement of the necessity for the newspaper, including, if a tenant command, why host installation newspaper does not serve the needs of the requestor's audience.
 2. Attach four (4) recent copies of newspapers published by host and any other tenants.

Attachment 2 to Appendix F—Military Department Newspaper Data

As required by section H., paragraph 2. of this Appendix, the following information shall be provided biennially on each newspaper published by the Military Departments.

- A. Name of newspaper.
- B. Publishing command and mailing address.
- C. Printing arrangement:
 1. Government equipment.
 2. Government contract with commercial printer.
 3. CE contract (give name and mailing address of commercial printer).
- D. Frequency and number of issues per year.
- E. Number of copies per issue and estimated readership.
- F. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.
- G. Size of newspaper staff, listed as full time and part time.
- H. Annual costs:
 1. Editorial and administrative.
 2. Supply and equipment.
 3. Printing (funded newspapers only).
 4. Distribution and mailing.
 5. Staff transportation.

Dated: June 13, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14039 Filed 6-15-90; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 35 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations regarding procedures for identifying and correcting mail with an incorrect date in the meter or mailer's precancel postmark, and the revised regulations adopting a reduction in the factor used in calculating the charge assessed by the Postal Service on returned endorsed third-class mail, have previously been published in the *Federal Register*.

EFFECTIVE DATE: June 17, 1990.

FOR FURTHER INFORMATION CONTACT: Neva R. Watson, (202) 268-2963.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 35, dated June 17, 1990. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following excerpt from the Summary of Changes section of the transmittal letter for issue 35 covers the minor changes not previously described in interim or final rules published in the *Federal Register*.

Summary of Changes

Chapter 1

Section 121, *Packaging*, subsection 121.323c, is amended to provide requirements for heat-shrinkable plastic film for easy and average loads up to 5 pounds. (PB 21759, 3-22-90)

Sections 122.25, *Postage Placement*, and 145.22, *Placement of Permit Imprints*, are revised to eliminate apparent contradictions concerning placement of postage on mailpieces. (PB 21762, 5-3-90)

Exhibits 122.63c-e, g, j, and m-q, are revised to reflect mail processing changes. Palm Springs CA 922 has been deleted from 122.63c; other changes are indicated by bold type. (PB 21759, 3-22-90)

Section 123.42, *Lottery Matter* (18 U.S.C. 1302), is amended to reflect new exemptions permitting advertising lotteries which are not prohibited by state law and broadening the

current exemptions for advertising state-conducted lotteries. (PB 21762, 5-3-90)

Section 124.38, *Etiologic Agent Preparations, Clinical Specimens, and Biological Products*, is amended to clarify requirements concerning performance testing and absorbent material. (PB 21759, 3-22-90)

Section 126.23, *Special Services Not Available*, is revised to add that return receipt for merchandise service and Express Mail service are not available for items transmitted through Department of State facilities. (PB 21760, 4-5-90)

Section 127, *Minimum Sizes*, is amended to correct reference to Notice 5-B in 127d to read Notice 5, *Return to Sender*. (PB 21760, 4-5-90)

Section 134, *Mail Sent by Members of the U.S. Armed Forces*, is revised to terminate free mailing privileges to all military personnel on active duty serving with the military task force in Panama, including service members hospitalized as a result of wounds or injuries received in combat. (PB 21758, 3-8-90)

Section 137.252, *Agency Authorization Codes, Permit Imprint Numbers, BRM Permit Numbers, and Sampling (RPW) Numbers*, is updated. Changes are indicated by bold type.

Sections 144.21 and 144.52 are revised, 144.39 is deleted, and 144.227 and 144.8 are established to reorganize and expand regulations for entry of metered mail at other than the licensing post office. Sections 371, 372, 373, 651.2, 652.11, 771, and 772 are also revised to include consistent language and correct references to the sections affected by the above changes. (PB 21760)

Section 153.2, *Delivery of Addressee's Mail to Another*, is revised to place additional responsibility on commercial mail receiving agencies (CMRAs) in the establishment and operation of CMRA locations and on the Postal Service to ensure that mail is properly delivered to CMRAs. (PB 21761, 4-19-90)

Section 154.9, *Implementation Deadline*, is deleted since the implementation deadline requirements imposed on plant-load operations are no longer necessary. (PB 21760, 4-5-90)

Section 155.25, *Mobile or Trailer Homes*. Sections 155.252, 156.22, and 157.32c are revised to ensure consistency by postmasters when approving establishment or extension of carrier service to customers residing in permanent or transient mobile home, trailer, or recreational vehicle parks. (PB 21761, 4-19-90)

Section 156.5, *Rural Boxes*, is amended to include a current list of mailbox manufacturers and the recommended height for rural mailboxes. (PB 21761, 4-19-90)

Section 164.22, *Cooperation with Collectors*, is revised to include that postmarking devices may be used by contractors working under an active contract with the USPS.

Chapter 4

Sections 441.31c(1), *Required Three-Digit Sacks*, and 767.223, *Three-Digit Sacks*, are revised to clarify the labeling requirements for 3-digit sacks and the use of appropriate

city or SCF and state names followed by the appropriate 3-digit prefix reflecting the contents of the sack. (PB 21762, 5-3-90)

Section 442.5 and a new section 445.3 have been added to allow mailers to palletize multiple flat-size second-class publications that have each been separately presorted into packages to the finest extent possible to co-palletize packages from two or more mailings on the same pallet. Section 445.3 has been renumbered as 445.4 (PB 21762, 5-3-90)

Chapter 9

Section 912.55, *Notice of Arrival*, is revised to allow return of a certified mailpiece to the sender within the 15-day holding period, if the sender specifies a lesser number of days on the mailpiece. (PB 21760, 4-5-90)

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the domestic mail manual.

* * *

Transmittal letter for issue	Dated	Federal Register publication
35.....	June 17, 1990.....	55 FR [Insert FR page number].

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-14052 Filed 6-15-90; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 411

[BPD-458-F]

RIN 0938-AD34

Medicare Program; Physician Liability on Non-Assigned Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule establishes in regulations the circumstances in which a nonparticipating physician who does not accept Medicare assignment of a claim is required to refund to the beneficiary any amounts collected for physician services determined to be not reasonable and necessary. Its purpose is to extend limitation of liability protection to beneficiaries with non-assigned claims when the physician knew or could reasonably have been expected to know that Medicare would deny payment for the services. Physician appeal rights are also specified. This rule conforms our regulations to section 9332(c) of the Omnibus Budget Reconciliation Act of 1986.

EFFECTIVE DATE: These regulations are effective on July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, (301) 966-4481.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1862(a)(1) of the Social Security Act (the Act), precludes Medicare payment for services that are "not reasonable and necessary" for the diagnosis or treatment of an illness or injury, or to improve the functioning of a malformed body member, or for several other specified purposes.

Before October 1, 1987, with respect to services found to be "not reasonable and necessary", under the law and the Medicare rule—

- A physician who did not accept assignment could charge the beneficiary (or someone on his or her behalf) for services for which Medicare payment was denied; and

- A physician who accepted assignment could not charge the beneficiary for those services but could receive Medicare payment under the provisions of section 1879 of the Act, which permits payment for services denied under section 1862(a)(1) of the Act if neither the physician nor the beneficiary knew, or could reasonably have been expected to know, that Medicare would not pay for the services.

Section 9332(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) added to the Act a new section 1842(1), to change the requirements for physicians who do not accept assignment. The provisions of section 1842(1) are applicable only to physicians and are effective for physician services furnished on or after October 1, 1987. Under these provisions, unless specified conditions are met, a physician who does not accept assignment—

- Must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary; and

- Must make the refund within specified time limits and, if he or she knowingly and willfully fails to do so, may be subject to civil money penalties, or to exclusion from Medicare, or both.

A refund is not required if the physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services, or if the beneficiary (or the person acting on behalf of the beneficiary, hereafter referred to as the other person) was informed in advance that Medicare would not pay for the services and agreed to pay for them. Unlike claims submitted on an assigned basis, there is no provision for Medicare payment even if neither the physician nor the beneficiary knew or could reasonably have been expected to know that Medicare would not pay.

To implement section 9332(c) of Public Law 99-509, on December 30, 1988, we published in the *Federal Register* (53 FR 53025) proposed regulations with a 60-day comment period. The provisions of the proposed rule, the comments received, our responses, and the provisions of the final regulation are discussed below.

II. Provisions of the Proposed Regulations

In order to implement section 9332(c) of Public Law 99-509, we proposed to amend the regulations in 42 CFR part 405 by adding a new § 405.339. (Since that time, subpart 405 has been recodified; the correct cite in this final rule is § 411.408.) A summary of the proposed changes follows:

A. Refund Procedures

In accordance with the provisions of section 1842(l)(1)(B) of the Act, we proposed to require a refund of incorrectly collected amounts be made to the beneficiary within the following time limits:

- In the case of a physician who does not request review of the denial within that period, the refund would be made to the beneficiary within 30 days after the date the physician receives notice that Medicare will not pay for the services.

- In the case of a physician who requests review of the denial within 30 days of receipt of the initial determination, the refund would have to be made to the beneficiary within 15 days after the date on which the physician receives notice of adverse determination on the review.

We also proposed that a physician who knowingly and willfully fails to make a refund within the time limits enumerated may be subject to sanctions such as civil money penalties and/or exclusion from the Medicare program (title XVIII of the Social Security Act) and State health care programs (titles V, XIX, and XX of the Social Security Act). This section of the regulation would be monitored by the Office of Inspector General (OIG) and implementing regulations may be found in 42 CFR, chapter V, parts 1001, 1002 and 1003.

We proposed that when the beneficiary files a request for review of the denial of payment within 30 days of receipt of the initial determination, the physician's time limit for making the refund would not be extended. The refund would have to be made to the beneficiary within 30 days after the date the physician receives notice that Medicare will not pay for the services.

Under section 1842(l)(1)(C) of the Act, a refund would not be required of the physician if one of the following conditions is met:

- The physician did not know and could not reasonably have been expected to know that payment would not be made for the services because they were not reasonable and necessary as defined by section 1862(a)(1) of the Act; or
- Before the services were provided, the beneficiary (or other person) was informed by the physician that Medicare payment would not be made for the specific services and, after being so informed, the beneficiary (or other person) agreed to pay the physician for the services.

Section 1842(l)(1) of the Act provides that a refund is not required if the physician informs the beneficiary in advance that Medicare will not pay for the service and the beneficiary (or other person) agrees to pay. Although not specifically required by the statute, we proposed that the physician's advance notice to the beneficiary (or other person) that Medicare is likely to deny payment for the service must be in writing, using approved notice language, and must give the physician's reasons for believing that Medicare will deny payment. In addition, we proposed that the beneficiary (or someone eligible to sign for the beneficiary under § 424.36(b)) must sign a statement of the effect that he or she agrees to pay for the service. We believed this would be the most effective way of protecting the interests of both the beneficiary and the physician in cases when the physician furnishes services for which he or she believes Medicare is likely to deny payment. In addition, the requirement

that the physician must give his or her reasons for believing that Medicare is likely to deny payment ensures that the beneficiary (or other person) receives sufficient relevant information to make a truly informed decision. The statutory protection of beneficiaries from liability when they, in good faith, receive services from physicians on an unassigned basis that are denied as not reasonable and necessary is only achieved when a beneficiary (or other person), having been duly informed of the circumstances and of his or her options, decides whether or not to receive the services and agrees to pay for them (if Medicare, in fact, denies payment).

B. Physician Appeal Rights

While section 1842(l) of the Act implicitly grants appeal rights to nonparticipating physicians on unassigned claims by referring to physicians requesting reconsideration or seeking appeal, it does not specifically delineate the extent of those rights. We proposed that under these regulations, nonparticipating physicians would have the right to appeal determinations on unassigned claims denied because the services were determined to be not reasonable and necessary. We proposed to extend the right of appeal to a determination that a refund is required because a physician either knew or could have reasonably been expected to know that Medicare would not pay for the services because they were not reasonable and necessary. Additionally, we proposed that the right of appeal would extend to cases where it was determined that the beneficiary (or other person) was not informed in advance that Medicare was likely to deny payment for the services or, if so informed, did not agree to pay for the service. We proposed to extend to these physicians the existing appeals process for claims under Part B, and 42 CFR part 405, subpart H. However, to ensure that refunds are made promptly, we proposed requiring that they be made within 15 days of receipt of the initial review determination.

III. Analysis of and Response to Public Comments

We received 29 timely pieces of correspondence from individuals and organizations in response to the proposed rule. The commenters included physicians, associations representing physicians, medical associations, a hospital, a legal advocate for Medicare beneficiaries, consumer advocacy groups, and a Medicare beneficiary. With the exception of comments relating to the impact statement, we discuss the

comments and provide our responses below. The comments relating to the impact are addressed in the Impact Statement in section V of this preamble.

A. Applicability of Provision

Comment: Physicians, such as radiologists or pathologists, who furnish services on the order of another physician, generally have no way of knowing whether Medicare is likely to deny payment for the services they furnish and are likely to be found not liable on such grounds upon filing an appeal. Therefore, the final rule should be modified to exclude physicians who furnish services on the order of another physician.

Response: We have no authority under existing law to exclude physicians who furnish their services on the order of another physician. Section 1842(l)(1)(A)(i) of the Act refers only to nonparticipating physicians and there is nothing in either the statute or the Congressional reports on the bill language which indicates any intent on the part of Congress to exempt certain categories of physicians from the provision.

In order to be held not liable for a service subsequently denied as not reasonable and necessary, a physician who furnishes a service on the order of another physician and is unable to give the beneficiary an acceptable advance notice that Medicare is likely to deny payment for the service, must show that he or she did not know, and could not reasonably have been expected to know, that Medicare would deny payment for the service. While we recognize that this imposes somewhat of a burden on the physician in that he or she is routinely required to file an appeal in such cases in order to be held not liable, we believe this is preferable to the alternative of holding the beneficiary liable at the initial level. Under that approach, the burden of providing whether a physician knew, or could reasonably have been expected to know, that Medicare was likely to deny payment for the service, would be shifted to the beneficiary at the initial level, and it would be incumbent on the beneficiary to refute the presumption that the physician did not know, and could not reasonably have been expected to know, that Medicare would deny payment for the service. We find this to be unacceptable for a provision intended to protect beneficiaries.

Comment: HCFA should revise the final rule to specify that the refund provisions apply only to services otherwise covered which are denied

solely because they are not reasonable and necessary.

Response: We agree with this comment. The statute refers to services "otherwise covered under this title [which are] not reasonable and necessary [under section 1862(a)(1) of the Act]." This draws the distinction between services that Medicare will pay for under certain circumstances and those for which Medicare does not pay under any circumstances because of other statutory exclusions (for example, routine physical checkups excluded under section 1862(a)(7) of the Act). When the refund provisions were initially implemented, some carriers were improperly applying them to non-covered services. Although we believe that clarifying instructions issued to Medicare carriers in March 1988 have virtually eliminated this problem, we have nevertheless modified the final rule at § 411.408 to adopt this comment.

Comment: Physicians should be given the option in the final rule of providing free care to Medicare beneficiaries.

Response: There is nothing in either the law or the proposed rule which precludes a physician from furnishing care to a Medicare beneficiary without charge. The refund provisions discussed in the proposed rule are applicable only in those cases where a beneficiary submits a bill from a physician for services which are subsequently denied as not reasonable and necessary. If a physician elects to furnish services free of charge, no claim would be submitted and there is no possibility of denial. Thus, the refund provisions do not apply.

B. Advance Notices

Comment: The proposed rule requires physicians to be more specific in their advance notices in explaining why they believe it likely that Medicare will deny payment for a service than we require the carriers to be in the denial notices they send to beneficiaries and physicians when they deny a service as not reasonable and necessary.

Response: In September 1988, we instructed the Medicare carriers, in a program memorandum, to send to all physicians a letter concerning the advance notice provisions. Included in that letter was a list of sample reasons for physicians to use in their advance notices to explain why they believe it likely Medicare would deny payment for a particular service. The list of reasons furnished contained language which is identical to the language carriers use to notify beneficiaries and physicians when they deny services as not reasonable and necessary. In addition, the American Medical Association, in

consultation with HCFA, developed a booklet, entitled "Medicare Carrier Review," that provides comprehensive information dealing with the issue of medical necessity denials. This booklet was made available to all physicians and the general public in October 1988. Thus, we do not require physicians to be any more specific in their advance notices than we require the carriers to be in the notices they send when they deny a service as not reasonable and necessary.

Comment: The rule should be modified to delete the requirement that the advance notice and beneficiary agreement to pay be in writing.

Response: Although the statute does not require an advance notice to be in writing or the beneficiary's agreement to pay to be written and signed, we believe the provisions on advance notice will be most effective if they are in writing. If there is a dispute over whether proper advance notice was given, and there is no written evidence, it will be necessary to require that a refund be made to the beneficiary. Use of written notices and agreements to pay will avoid most disputes of this nature and will help to resolve those that do arise. Also, as was pointed out in most comments we received from advocacy and consumer groups commenting on behalf of Medicare beneficiaries, written notices are essential to ensure that patients are making informed choices as was intended by the statute. We agree with those commenters and have retained the requirement that the advance notice and beneficiary agreement to pay be in writing.

Comment: HCFA should not require physicians to specify in the advance notice their reasons for believing Medicare is likely to deny payment for a service as not reasonable and necessary. This requirement places the unreasonable burden of having extremely detailed knowledge about Medicare program coverage guidelines on physicians. A related comment was made that this requirement exceeds the statutory requirement that the patient be informed that Medicare "may" not pay for a service.

Response: We do not agree that our requirements with respect to the advance notice require physicians to be experts on Medicare coverage guidelines in order to be held not liable on the basis of an advance notice. HCFA makes available to physicians listings and other informational issuances that specify certain services that are not covered as reasonable and necessary by Medicare. HCFA attempts to inform physicians on a timely basis whenever changes are made in coverage

policy or new medical treatments are either approved or disapproved. It is only when the physician has previously received either such information or a denial notice for the same service in similar circumstances, or could reasonably be expected to know by virtue of normal medical knowledge that the service was not needed, that he or she would be held to have had reason to believe the service is likely to be denied as not reasonable and necessary and to have had a reason to give the beneficiary an advance notice.

If a physician has not been so informed and could not reasonably have been expected to know that the service was not reasonable and necessary, there is no reason for the physician to give the patient an advance notice. The physician would be justified in assuming Medicare will pay for the service. If the service is subsequently denied as not reasonable and necessary and the physician was never previously informed that Medicare does not pay for the service in the same or similar circumstances, the physician would be found not liable because he or she did not know, and could not reasonably have been expected to know, that Medicare would deny payment for the service. The physician would, of course, need to request a review of the initial determination on these grounds.

We believe the requirement that the physician explain in an advance notice why he or she believes Medicare is likely to deny payment for a service is one of the most critical elements of an advance notice. In a May 3, 1988, letter from Fortney Stark, Chairman, and Bill Gradison, Ranking Minority Member, of the House Subcommittee on Health, we were advised that Congress intended that a physician's liability should be waived only "if the physician provides specific advance notice that Medicare is **LIKELY** (emphasis supplied) to deny payment." The letter went on to state that an advance notice "should only be effective if the physician knows (or has a genuine reason to believe) that Medicare is likely to deny payment for the particular service." From this it is clear Congress intended that an advance notice should be used only in cases where the physician knows or believes it likely Medicare would deny payment for the service. It was not intended that physicians be able to circumvent the intent of the refund provision by routinely giving notices to all beneficiaries that merely state that Medicare may deny payment for services.

In light of this, we do not believe it is unreasonable to expect the physician to

explain to the patient why he or she believes Medicare is not likely to pay for the service. Otherwise, it would be impossible to ensure that the Medicare beneficiary actually receives sufficient relevant information to permit him or her to make an informed decision about receiving and paying for the service. An informed decision is impossible if the beneficiary has no idea why the physician expects that Medicare payment will be denied. This same thought is reflected in the comments we received from beneficiary advocacy and consumer groups in support of this requirement. We agree with those groups and have retained in the final rule the requirement that physicians give their reasons for believing Medicare is likely to deny payment.

Comment: The rule should include mandatory language for the advance notice and should prohibit physicians from using alternative reasons to explain why they believe Medicare is likely to deny payment for a service.

Response: The proposed rule set forth certain requirements an advance notice must meet to be considered acceptable. Under the proposed rule, the notice: (1) Must inform the patient that the physician believes Medicare is likely to deny payment for a service, (2) must clearly identify the particular service, and (3) must cite the physician's reasons for this belief.

In the letter sent to all physicians regarding the advance notice provisions, we provided model language for an acceptable advance notice incorporating these elements. Although we considered making the model language mandatory in all cases, we believe such a requirement could have unnecessary adverse effects on both beneficiaries and physicians. The use of a single mandatory notice could prevent physicians from drafting an advance notice pertinent to their specialty or to the unique circumstances of an individual case. Since enactment of the refund provisions, we have approved advance notice language developed by physicians when such notices have provided as much (or more) relevant information as our model notice language. We want to retain that flexibility. In our view, the more relevant information the beneficiary receives in the advance notice, the greater his or her ability to make an informed decision about receiving and paying for the service. A single mandatory notice is likely to have an inhibitory effect on physicians who might otherwise elect to provide additional information about Medicare

coverage guidelines for the specific service.

Comment: HCFA should establish procedures for monitoring physicians for excessive or inappropriate use of advance notices.

Response: In order to be held not liable for a refund for a denied service on the basis of an advance notice, a physician must furnish a copy of the notice to Medicare, either through the beneficiary when he or she submits a claim to Medicare or through an appeal of an unfavorable determination that a refund is due. Thus, we expect that the carriers will review most advance notices given to beneficiaries to ensure that they conform to the regulatory requirements without any additional special monitoring procedures.

Comment: We should amend the final rule to provide that, where a physician gives a beneficiary an advance notice because he or she believes Medicare is likely to deny payment for a service, the payment decision should not be influenced by the notice.

Response: We agree that payment should not be denied merely because an advance notice was given. However, we do not believe this operational concern is an appropriate topic for inclusion in the final rule. Medicare carriers make payment decisions on the basis of instructional issuances from HCFA. The law makes clear that the refund provisions apply only where payment may not be made by reason of section 1862(a)(1) of the Act because a service otherwise covered under title XVIII is not reasonable and necessary under the standards described in that section. The only basis for a carrier to deny a service as "not reasonable and necessary" is where the requirements of section 1862(a)(1) are not met. The fact that an advance notice was given plays no part in the payment decision; it is only a factor in determining whether the physician may bill the patient for the service even though it was denied. The instructions on the refund requirements clearly state that the fact that an advance notice was given is not prejudice in any way a determination as to whether there is or is not sufficient evidence to justify a denial under section 1862(a)(1).

Comment: Carriers should be required to make known to physicians any explicit policies they use in payment decisions.

Response: Although not directly pertinent to this rule, HCFA will be taking a number of actions to ensure that physicians become more familiar with Medicare coverage guidelines.

Some of the specific actions are as follows:

(1) HCFA is in the process of developing a system wherein each carrier would be required to invite comment from the State medical society and appropriate specialty societies on any changes in any medical coverage policy of that carrier. Medicare carriers will discuss comments received, correspond directly with those societies to outline potential modification of coverage policy and provide a final rationale for final policy decisions. Such correspondence will be augmented by notices in carrier newsletters and bulletins as frequently as required to communicate the information.

(2) In the above-mentioned proposed rule, HCFA will direct each carrier to seek input from the State medical society and appropriate specialty societies on specific parameters that might be used in implementing new coverage policy at the carrier level.

(3) Each carrier has been instructed to make available to the State medical society and otherwise to make public all existing medical coverage policies. Carriers have also been instructed to consider any views on existing policies and their implementation that may be submitted by medical groups and other interested parties.

We believe these steps, in combination with previous actions taken in these regards, will help make physicians much more familiar with the circumstances under which Medicare will pay for a particular service as reasonable and necessary and will significantly reduce the likelihood of an advance notice being given inappropriately.

Comment: We should establish a process by which a physician can submit a self-drafted advance notice for prior approval.

Response: Section 405.339(b) of the proposed rule stated that the physician must use "approved" notice language in an advance notice and specifies the elements necessary for such notices. While a physician is free to submit to HCFA for approval a self-drafted notice, we do not plan to establish a specific regulatory procedure for obtaining such approval.

C. Physician Appeal Rights

Comment: The proposed rule should be modified to clarify that the 15 days within which a physician must make a refund begins only after the physician receives the final "review" determination.

Response: A physician who does not accept assignment and is dissatisfied

with the initial determination has the right to request a review of that determination under the same appeals procedures currently applicable to physicians who accept assignment. The refund provisions at section 1842(1) of the Act specifically indicate that a refund is timely, in the case of a physician who does not seek appeal, if it is made within 30 days of the initial determination. Where a request for appeal is made within that 30-day period, the refund must be made within 15 days after the date the physician receives notice of an adverse determination on the initial request for appeal. There is no statutory provision for delaying the refund requirement beyond that on the basis of a request for further review.

Aside from the legal arguments against this proposal, we believe adoption of this comment would significantly lessen the protection available to the beneficiary intended by the statute. In our view, a beneficiary should be able to expect to receive a refund within a reasonably short period of time after the initial determination is made. Nevertheless, we agree that a physician should have the right to delay the refund if he or she genuinely believes that a denied service should have been paid for, or because one of the exceptions to the refund provisions is met. We believe the pre-refund appeal time frames strike a fair balance between the due process rights of physicians and the public policy favoring timely reimbursement to the beneficiary.

When a physician makes a refund which is found to be unnecessary at a subsequent level of appeal, both the physician and beneficiary are informed that the beneficiary is liable for the service and that the physician is free to collect his or her full charge (up to the maximum allowable actual charge limit) for the service.

Comment: The rule should specify a time limit within which Medicare carriers must conduct an initial review.

Response: One of the criteria used to evaluate the performance of a Medicare carrier is its timeliness in processing review requests. This is done to encourage the carriers to process such requests as quickly as possible. However, we are reluctant to put carriers in the position of having to process an appeal within a prescribed period of time. While we share the commenter's concern that refunds not be delayed an inordinate amount of time as a result of the appeals process, we believe that, in the long run, adoption of the commenter's proposal could have a deleterious effect on the appeals

process. For example, if the time necessary for full development of documentation would exceed the allowed time, a review determination may be made without full development of the claim. Our overriding concern with respect to the appeals process is that carriers make proper determinations based on the available evidence, whether that decision favors the beneficiary or the physician.

Comment: Beneficiary notices should be issued only after the physician has exhausted all avenues of appeal.

Response: The statute requires that physicians make refunds to patients within 30 days of the initial determination, unless the physician requests a review of that determination within that time. Once it has been determined that a service is not reasonable and necessary, we have an obligation to inform the beneficiary of that fact. Further, to permit the physician to appeal an unfavorable determination on the question of whether a refund is required without giving the beneficiary those same rights would clearly be contrary to the best interests of the beneficiary, since the beneficiary and physician may have conflicting interests in the outcome of the physician's appeal. This could be the case if the physician appeals on the basis that proper advance notice was given to the beneficiary and the beneficiary agreed to make payment if necessary, while the beneficiary contends that, although the physician had reason to believe that Medicare payment would not be made, he or she was not given proper advance notice by the physician. In that instance, the physician is looking for a determination that would not require a refund, while the beneficiary is looking for a determination that would require that a refund be made.

Comment: The rule should state that the beneficiary becomes a party to any appeal filed by the physician.

Response: 42 CFR 405.808 currently specifies that the parties to a review are "the persons who were parties to the carrier's initial determination." Since the beneficiary is a party to the initial determination on both the payment and the refund issue, he or she also becomes a party to any appeal filed by the physician on those issues. Our current instructions make this clear and require that beneficiaries be informed when a physician files an appeal and that they be advised of the results of the review determination.

D. Claims Process

Comment: The final rule should include the claims development program

under which carriers currently consult with physicians before denying a claim as not reasonable and necessary.

Response: The claims development program was developed shortly after initial implementation of the refund provision in response to the large number of complaints we received from nonparticipating physicians that they were unfamiliar with Medicare coverage guidelines and never knew whether Medicare would pay for a particular service. It was anticipated that, as the carriers contacted physicians to determine whether there was additional documentation concerning the need for a service, nonparticipating physicians would become familiar with Medicare coverage guidelines and be more likely to provide the necessary documentation on Medicare patients' bills in the first instance to avoid unnecessary denials merely because of insufficient information.

Although the claims development program was originally intended as a temporary measure, preliminary evaluation of the program indicated it has had an overall positive effect on the claims adjudication process. We are presently conducting a more comprehensive evaluation of the program. We have no plans to eliminate or curtail the program at this time, and we do not expect to do so if the positive results of our preliminary evaluation are sustained by the full evaluation in progress. If a decision is made to eliminate or modify the claims development program, we would consult with interested parties in advance and give those parties at least 60 days notice of any proposed substantial modification.

It is not the purpose of this rule, however, to revise the manner in which carriers review claims to determine whether a service is reasonable and necessary. Rather, the purpose is to set forth the principles under which we will require a physician to make a refund for a service once it has been denied as not reasonable and necessary. We have, therefore, not revised the final rule to include the claims development program.

Comment: The final rule should set forth certain requirements carriers should follow when communicating with physicians under the claims development program.

Response: Although we have not modified the final rule to include these operational requirements, we have advised the carriers in program instructions that the notices they send to physicians under the claims development program are not to be

negative or accusatory in tone, are to specify the steps required under the claims development program, and are to identify a point of contact at the carrier. The rulemaking process is designed to set forth policy principles for the public rather than operational processes. Inclusion of material in regulations such as the contents of notices or the specific procedures under which carriers process claims for payment would make the rulemaking process virtually unworkable and is clearly undesirable.

Comment: Payment decisions should only be made by qualified medical reviewers.

Response: Medical review decisions are made by trained claims examiners, nurses or physicians, according to the complexity of the case. Decisions by nonphysician reviewers are based upon medical guidelines prepared by physicians. Therefore, medical necessity decisions are based on physician-developed criteria. Since medical necessity is developed for all physician services, physician-developed criteria are used for the evaluation of each claim for physician services.

Comment: We should consider revision of the denial notices sent to Medicare beneficiaries and physicians when an unassigned claim for physicians' services is denied as not reasonable and necessary.

Response: As we indicated earlier, we do not believe it appropriate to use the rulemaking process to develop payment or payment denial notices. Notice language is communicated to Medicare carriers through program instructions. Nevertheless, we plan to give full consideration to the suggestions we received for improving the notices sent to both beneficiaries and physicians.

IV. Provisions of the Final Regulations

While the proposed rule indicated that physicians would have the same rights as beneficiaries to appeal adverse determinations and would be subject to the same time limitations, the relevant comparison is actually between physicians who submit claims on an assignment-related basis and those who do not. To assure that all physicians are treated equally with respect to appeal rights, we have modified the final rule to make clear that we are extending to physicians who do not accept assignment the same appeal rights currently available to those who do.

Additionally, although not discussed in the proposed rule, we believe it appropriate to incorporate into regulations a definition of "payment on an assignment-related basis". This rule affords an opportunity to do so. Therefore, we are revising 42 CFR part

400 to add the following definition at § 400.202:

"Payment on an assignment-related basis" means payment for Part B services—

(1) To a physician or other supplier under an assignment from the beneficiary in accordance with § 424.55 or § 424.56 of this chapter;

(2) To a physician or other supplier after the beneficiary's death, in accordance with § 424.64(c)(1) of this chapter; or

(3) To an entity that pays the physician or other supplier under a health benefit plan, in accordance with § 424.66 of this chapter.

The portion of Subpart C of part 405 in which we proposed to include the new provisions was recently redesignated as part 411 by regulations concerning Medicare recovery against third parties published on October 11, 1989 (54 FR 41716). Therefore, we are designating the proposed § 405.339 as § 411.408. With the exceptions noted above, and minor changes made to improve clarity, the final regulations reflect the proposals made in the December 30, 1988 proposed rule.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in:

- An annual effect on the economy of \$100 million or more;

- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with the foreign-based enterprises in domestic or export markets.

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians as small entities. However, carriers, as our contractors, and beneficiaries, as individuals, are not considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis also must conform to the provisions of section 604 of the RFA. For purposes of

section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area.

In the initial regulatory impact statement, we indicated that the provisions of the proposed rule would not result in impacts meeting any of the criteria specified above. The following discussion, in combination with the rest of the preamble of this final rule, responds to comments received on the initial impact statement, and states our reasons for not preparing a final impact analysis.

Comment: Two commenters suggested that HCFA should provide sufficient evidence to justify its conclusions that the impact of the proposed rule meets the exceptions to E.O. 12291. The commenters believe that an annual effect on the economy could reach the \$100 million threshold based on 89,611,723 nonassigned claims received by Medicare carriers nationwide and certain assumptions. Specifically, the commenters assumed a 5 percent rate of denials on nonassigned claims for services that are determined to be not reasonable and necessary and also assumed that physicians' costs to research claims, provide documentation and file appeals would be \$20 per claim. Thus, they estimated costs of approximately \$90 million ($89,611,723 \times 5$ percent $\times \$20$). The commenters wanted to know to what extent HCFA's information indicated that the economic impact is less than \$100 million. Also, they stated that HCFA needs to address specifically the effects of this rule upon competition and productivity.

Response: The commenters provided estimates to support their claim that this rule meets the E.O. 12291 criteria. We do not agree with the commenters' estimates. The number of nonassigned claims cited by the commenters is correct according to HCFA claims data for FY 1988; however, no data were submitted to verify the other assumptions used. We do not maintain data that identify the specific number of nonassigned claims denied for medical necessity. However, HCFA records for FY 1988 indicate that 2 percent of all billed charges were disallowed for medical necessity. We believe that the 2 percent denial rate could reasonably apply to nonassigned claims as well. Using the 2 percent figure (percentage of denied claims for medical necessity) multiplied by \$20 (commenters' assumed expense incurred by physicians for researching a claim, providing documentation and filing an appeal) multiplied by 89,611,723 (number of nonassigned claims in FY 1988), we

estimate that resultant costs will equal \$35,844,688. This is well under the \$100 million threshold for annual effect on the economy of E.O. 12291.

We also do not believe this rule will have a significant adverse effect upon a physician's competition and productivity. Physicians would provide written notice to beneficiaries if the physician believes a claim may be disallowed because it is not reasonable or necessary. In 1988, 665,425 physicians filed a total of 378,324,316 Medicare assigned and nonassigned claims. If approximately 2 percent of all billed charges were disallowed, this equates to approximately 11 disallowed claims per physician. Therefore, we do not anticipate a large volume of notices being prepared by physicians.

Further, the effect of this regulation would also depend upon the physician's billing practice. A physician who routinely informs Medicare beneficiaries that certain services would or would not be covered would not be as affected as physicians who do not routinely provide this information to Medicare beneficiaries.

For the reasons discussed above, in combination with the rest of this preamble, we have determined that the provisions of this final rule will not result in effects meeting any of the criteria for a "major rule." Thus, we have determined that a final regulatory impact analysis is not required.

Comment: Two commenters asserted that HCFA should provide evidence and justification of its conclusion that the implementation of this rule would not have a significant economic impact on physicians and thereby meet the exceptions provided in the RFA. The commenters believed that our statement in the proposal that we are not certain of the effects section 9332(c) of Public Law 99-509 may have on physicians is in direct contradiction to the conclusion that the rules would not result in a significant economic impact.

Response: The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared for all regulations that will have "a significant economic impact on a substantial number of small entities."

In our initial impact statement included in the proposed rule, we did indicate that we were not certain of the effects section 9332(c) of Public Law 99-509 may have on physicians. We cannot predict the actual effects of this regulation on physicians. However, in the proposed rule we did identify possible effects and present possible outcomes and conclusions. Included in the discussion were possible effects on physician participation and physician

appeal rights. For example, more physicians might choose to enter into participation agreements or, on the other hand, they may choose not to provide services to Medicare beneficiaries when faced with the uncertain prospect of either providing refunds to beneficiaries or risking legal sanctions for violations of Medicare requirements. We believe that most physicians will continue to provide services to Medicare beneficiaries, and choose to accept assignment or not depending on the individual claim.

Physicians affected by this change will be able to file appeals contesting both denials of payment and determinations that the physician should have known that Medicare will not pay for the service. In the past, physicians providing services on an unassigned basis have not possessed this right. While this legislative change will not affect Medicare program expenditures (it affects only the placement of liability for services that are denied under current standards), we do expect Medicare carriers and PROs, to the extent that PROs review physician services, to incur some incremental administrative costs for the increase in review and hearings workload. These costs will be paid for through the contractor budget development process.

We do not believe these regulations would have a significant economic impact for the same reasons as stated above and in response to the comment concerning E.O. 12291. Therefore, we have determined and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities, or on the operations of a substantial number of small rural hospitals. We have, therefore, not prepared a final regulatory flexibility analysis or a final impact analysis for small rural hospitals.

VI. Paperwork Reduction Act

Section 411.408 of this rule contains information collection requirements subject to Executive Office of Management and Budget review under the Paperwork Reduction Act of 1980. In order for a physician to qualify for a waiver of the refund requirement, the physician must inform the beneficiary (or person acting on the beneficiary's behalf) that he or she believes Medicare is likely to deny payment. Section 411.408(f)(1) describes the content of such notices. Public reporting burden for this collection of information is estimated to be 5-10 minutes per visit but is applicable only to those visits where the physician believes Medicare is likely to deny payment for a service

as not reasonable and necessary. A notice will be published in the Federal Register when approval is obtained. Other organizations and individuals desiring to submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron, HCFA Desk Officer.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 411

Kidney diseases, Health professions, Medicare, Recovery against third parties, Reporting and recordkeeping requirements, Secondary payments.

For the reasons set out in the preamble, 42 CFR parts 400 and 411 are amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

2. In § 400.202, the following definition is inserted in alphabetical order:

§ 400.202 [Amended]

Payment on an assignment-related basis means payment for Part B services—

(1) To a physician or other supplier that accepts assignment from the beneficiary, in accordance with § 424.55 or § 424.56 of this chapter;

(2) To a physician or other supplier after the beneficiary's death, in accordance with § 424.64(c)(1) of this chapter; or

(3) To an entity that pays the physician or other supplier under a health benefit plan, in accordance with § 424.66 of this chapter.

PART 411—EXCLUSION FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 is revised to read as follows:

Authority: Secs. 1102, 1842(l), 1862, 1871, and 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395u, 1395y, 1395hh, and 1395pp).

2. A new § 411.408 is added to read as follows:

§ 411.408 Refunds of amounts collected for physician services not reasonable and necessary, payment not accepted on an assignment-related basis.

(a) *Basic rule.* Except as provided in paragraph (d) of this section, a physician who furnishes a beneficiary services for which the physician does not undertake to claim payment on an assignment-related basis must refund any amounts collected from the beneficiary if Medicare payment is denied because the services are found to be not reasonable and necessary under § 411.15(k).

(b) *Time limits for making refunds.* A timely refund of any incorrectly collected amounts of money must be made to the beneficiary to whom the services were furnished. A refund is timely if—

(1) A physician who does not request a review within 30 days after receipt of the denial notice makes the refund within that time period; or

(2) A physician who files a request for review within 30 days after receipt of the denial notice makes the refund within 15 days after receiving notice of an initial adverse review determination, whether or not the physician further appeals the initial adverse review determination.

(c) *Notices and appeals.* If payment is denied for nonassignment-related claims because the services are found to be not reasonable and necessary, a notice of denial will be sent to both the physician and the beneficiary. The physician who does not accept assignment will have the same rights as a physician who submits claims on an assignment-related basis, as detailed in Subpart H of Part 405 and subpart B of part 473, to appeal the determination, and will be subject to the same time limitations.

(d) *When a refund is not required.* A refund of any amounts collected for services not reasonable and necessary is not required if—

(1) The physician did not know, and could not reasonably have been expected to know, that Medicare would not pay for the service; or

(2) Before the service was provided—
(i) The physician informed the beneficiary, or someone acting on the beneficiary's behalf, in writing that the physician believed Medicare was likely to deny payment for the specific service; and

(ii) The beneficiary (or someone eligible to sign for the beneficiary under

§ 424.36(b) of this chapter) signed a statement agreeing to pay for that service.

(e) *Criteria for determining that a physician know that services were excluded as not reasonable and necessary.* A physician will be determined to have known that furnished services were excluded from coverage as not reasonable and necessary if one or more of the conditions in § 411.206 of this subpart are met.

(f) *Acceptable evidence of prior notice to a beneficiary that Medicare was likely to deny payment for a particular service.* To qualify for waiver of the refund requirement under paragraph (d)(2) of this section, the physician must inform the beneficiary (or person acting on his or her behalf) that the physician believes Medicare is likely to deny payment.

(1) The notice must—

(i) Be in writing, using approved notice language;

(ii) Cite the particular service or services for which payment is likely to be denied; and

(iii) Cite the physician's reasons for believing Medicare payment will be denied.

(2) The notice is not acceptable evidence if—

(i) The physician routinely gives this notice to all beneficiaries for whom he or she furnishes services; or

(ii) The notice is no more than a statement to the effect that there is a possibility that Medicare may not pay for the service.

(g) *Applicability of sanctions to physicians who fail to make refunds under this section.* A physician who knowingly and willfully fails to make refunds as required by this section may be subject to sanctions as provided for in chapter V, parts 1001, 1002, and 1003 of this title.

(Catalog of Federal Domestic Assistance Programs No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: October 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: February 17, 1990.

Louis W. Sullivan,

Secretary.

Note: This document was received by the Office of the Federal Register on June 12, 1990.

[FR Doc. 90-13992 Filed 6-15-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations, Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation

determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Marshall County (unincorporated areas) (FEMA docket No. 6978)	
<i>Tennessee River:</i>	
At western county boundary.....	*577
Just downstream of Guntersville Dam.....	*581
Just upstream of Guntersville Dam.....	*596
At eastern county boundary.....	*597
<i>Big Spring Creek:</i>	
About 2.7 miles upstream of U.S. Highway 431.....	*598
About 3000 feet upstream of Joe Reeves Road.....	*645
<i>Hog Creek:</i>	
About 1.4 miles downstream of State Highway 205.....	*963
About 2250 feet upstream of State Highway 205.....	*1002
Maps available for inspection at the County Courthouse, Guntersville, Alabama.	
ALASKA	
Juneau (city and borough), (FEMA docket No. 6978)	
<i>Montana Creek:</i>	
Approximately 500 feet upstream of confluence with Mendenhall River.....	*29
Just downstream of Mendenhall Loop Road.....	*46
Just upstream of Mendenhall Loop Road.....	*48
Approximately 6,200 feet downstream from Montana Creek Road.....	*89
Approximately 5,400 feet downstream from Montana Creek Road.....	*101
Approximately 2,800 feet downstream from Montana Creek Road.....	*122
Just downstream of confluence with McGinnis Creek.....	*291
<i>Montana Creek Overbank Flow:</i>	
At convergence with Montana Creek.....	*36

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 800 feet upstream of convergence with Montana Creek.....	*37
Approximately 1,400 feet upstream of confluence with Montana Creek.....	*41
<i>Mendenhall River:</i>	
At confluence with Gastineau Channel.....	*20
Approximately 2,600 feet downstream of Mendenhall Loop Road.....	*38
Just downstream of Mendenhall Loop Road.....	*53
Just upstream of Mendenhall Loop Road.....	*56
Approximately 800 feet upstream of Mendenhall Loop Road.....	*59
At Mendenhall Lake.....	*63

Maps are available for review at the Department of Commerce and Regional Affairs, Municipal Regional Assistance Division, 949 East 36th Avenue, Suite 404, Anchorage, Alaska.

ARIZONA

Apache County (unincorporated areas) (FEMA docket No. 6975)

<i>Nutriso Creek:</i>	
Approximately 1,655 feet downstream of North Papago Street.....	*6,929
Approximately 2,875 feet upstream of North Papago Street.....	*6,951
Approximately 1,280 feet upstream of abandoned highway bridge.....	*6,965
Approximately 6,080 feet upstream of abandoned highway bridge.....	*6,990
Approximately 12,580 feet upstream of abandoned highway bridge.....	*7,015

Maps are available for review at Apache County Planning and Zoning Department, 75 West Clezeland, St. Johns, Arizona.

Flagstaff (city), Coconino County (FEMA docket No. 6978)

<i>Switzer Canyon Wash:</i>	
Approximately 120 feet downstream of the downstream Turquoise Drive crossing.....	*6,874
Approximately 2,000 feet upstream of the downstream Turquoise Drive crossing.....	*6,910
Approximately 1,320 feet downstream of Cedar Avenue.....	*6,951
At confluence with Switzer Canyon Wash East.....	*6,984
Approximately 1,160 feet upstream of San Francisco Street, at the corporate limits.....	*7,013

Maps are available for review at City Hall, 211 West Aspen Avenue, Flagstaff, Arizona.

Oro Valley (town), Pima County (FEMA docket No. 6984)

<i>Canada Del Oro Wash:</i>	
Just downstream of First Avenue Bridge.....	*2,570
Just upstream of U.S. Highways 80 and 89.....	*2,640

Maps are available for review at the Department of Public Works, 10900 North Stallard Place, Suite 128A, Oro Valley, Arizona.

Springerville (town), Apache County (FEMA docket No. 6975)

<i>Nutriso Creek:</i>	
Approximately 2,400 feet downstream of North Zuni Street (extended).....	*6,929
Approximately 440 feet downstream of North Zuni Street (extended).....	*6,934
North Zuni Street at the corporate limits.....	*6,945

Maps are available for review at the Apache County Planning and Zoning Department, 75 West Clezeland, St. Johns, Arizona.

California

Calaveras County (unincorporated areas) (FEMA Docket No. 6975)

<i>Cosgrove Creek:</i>	
Approximately 1,300 feet downstream of Vista Del Lago Road.....	*590
Just upstream of Vista Del Lago Road.....	*594
Just downstream of Gold Creek Bridge and approximately 200 feet east of the Gold Creek levee.....	*613

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At the confluence of Spring Valley Creek.....	*623
Approximately 1,250 feet upstream of New Hogan Dam Road.....	*632
<i>San Antonio Creek Tributary:</i>	
Just upstream of Cedar Lane.....	*3,829
Approximately 1,280 feet upstream of Cedar Lane.....	*3,843
Approximately 2,580 feet upstream of Cedar Lane.....	*3,872
Approximately 2,100 feet downstream of Pine Drive.....	*3,900
Just upstream of Pine Drive.....	*3,933

Maps are available for review at the Calaveras County Government Center, Building Inspector's Office, 891 Mountain-Ranch Road, San Andreas, California.

Lakeport (city), Lake County (FEMA docket No. 6946)

<i>Forbes Creek:</i>	
Approximately 200 feet downstream of Main Street.....	*1,331
At intersection of Forbes Street and Martin Street.....	#2
Approximately 500 feet upstream of Fairgrounds Road.....	*1,341
Approximately 510 feet upstream of Pacific Regency Way.....	*1,367
Approximately 2,480 feet upstream of Pacific Regency Way.....	*1,383
<i>North Branch Forbes Creek:</i>	
Approximately 200 feet downstream of Armstrong Street.....	*1,341
Approximately 520 feet upstream of Russell Street.....	*1,349
At intersection of Estep Street and Martin Street.....	#1
<i>Pier 1900 Drain:</i>	
Just upstream of Main Street.....	*1,334
Just downstream of State Highway 29.....	*1,345
At Main Street.....	#1
<i>Tenth Street Drain:</i>	
At intersection of Main Street and 10th Street.....	#1
Just upstream of Brush Street.....	*1,337
Approximately 160 feet upstream of Pool Street.....	*1,349
Approximately 200 feet east of intersection of Central Park Avenue and 11th Street.....	#3

Maps are available for inspection at City Hall, 225 Park Street, Lakeport, California.

Mariposa County (unincorporated areas) (FEMA docket No. 6975)

<i>Mariposa Creek:</i>	
Approximately 100 feet upstream of Mormon Bar Road.....	*1754
Approximately 500 feet upstream of Highway 140.....	*1904
Approximately 50 feet upstream of 17th Street.....	*1987
Approximately 1,125 feet downstream of Highway 49.....	*2078
Approximately 300 feet upstream of Highway 49.....	*2128

<i>Merced River:</i>	
Approximately 200 feet upstream of Foresta Road.....	*1682
Approximately 700 feet upstream of Pigeon Gulch confluence with Merced River.....	*1731
Approximately 200 feet upstream of Highway 140.....	*1840
Approximately 100 feet downstream of Crane Creek confluence with Merced River.....	*1977
Approximately 200 feet upstream of Section Line 15/16 in Township 3 South and Range 20 East.....	*2136

<i>Merced River Left Overbank:</i>	
Approximately 200 feet upstream of confluence with Merced River.....	*1785
Approximately 650 feet upstream of confluence with Merced River.....	*1791
Approximately 550 feet downstream of Highway 140.....	*1822

<i>South Fork Merced River:</i>	
Approximately 23.8 miles above river mouth.....	*4015
Approximately 23.89 miles above river mouth.....	*4034
Approximately 24.23 miles above river mouth.....	*4080
Approximately 24.66 miles above river mouth.....	*4094
Approximately 24.92 miles above river mouth.....	*4121

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<p>Maps are available for review at the Department of Public Works, 4639 Bon Hur Road, Mariposa, California.</p> <p>Roseville (city), Placer County (FEMA docket No. 6978)</p> <p>Antelope Creek:</p> <p>At confluence with Miners Ravine and Dry Creek.....</p> <p>Just upstream of Southern Pacific Railroad.....</p> <p>Just upstream of County Dump Road and Maya Archery Club.....</p> <p>Approximately 3,000 feet upstream of County Dump Road and Maya Archery Club.....</p> <p>At northern corporate limits.....</p> <p>Carby Creek:</p> <p>At confluence with Dry Creek.....</p> <p>At Oak Ridge Road.....</p> <p>Just upstream of Rocky Ridge Drive.....</p> <p>Approximately 250 feet downstream of Winchester Way.....</p> <p>At intersection of Colama Way and Trimble Way.....</p> <p>At intersection of Trimble Way and Wendy Court.....</p> <p>Dry Creek:</p> <p>At southwestern corporate limits.....</p> <p>At Vernon Street.....</p> <p>Just downstream of Darling Way.....</p> <p>Just upstream of Folsom Road.....</p> <p>At confluence of Antelope Creek and Miners Ravine.....</p> <p>Linda Creek:</p> <p>At confluence with Carby Creek.....</p> <p>Just upstream of Rocky Ridge Road.....</p> <p>At Champion Oaks Drive.....</p> <p>Just upstream of New Auburn Road.....</p> <p>At Old Auburn Road.....</p> <p>Miners Ravine:</p> <p>At confluence with Antelope Creek and Dry Creek.....</p> <p>Just upstream of confluence of Secret Ravine.....</p> <p>Approximately 4,075 feet upstream of confluence of Secret Ravine.....</p> <p>Approximately 8,900 feet upstream of confluence of Secret Ravine.....</p> <p>At eastern corporate limits.....</p> <p>Pleasant Grove Creek:</p> <p>Approximately 1,025 feet upstream of Fiddymount Road.....</p> <p>Approximately 4,000 feet upstream of Fiddymount Road.....</p> <p>Approximately 7,200 feet upstream of Fiddymount Road.....</p> <p>Approximately 200 feet upstream of Industrial Boulevard.....</p> <p>Approximately 3,000 feet upstream of Industrial Boulevard.....</p> <p>Secret Ravine:</p> <p>At confluence with Miners Ravine.....</p> <p>Just upstream of Roseville Reservoir Access Road.....</p> <p>Approximately 1,050 feet upstream of Reservoir Access Road.....</p> <p>At northern corporate limits.....</p> <p>South Branch Pleasant Grove Creek:</p> <p>Approximately 1,000 feet upstream of confluence with Pleasant Grove Creek.....</p> <p>Approximately 4,500 feet upstream of confluence with Pleasant Grove Creek.....</p> <p>Approximately 100 feet upstream of Foothill Boulevard.....</p> <p>Just downstream of Interstate Highway 65.....</p> <p>Approximately 8,025 feet upstream of Diamond Oaks Road.....</p> <p>Strap Ravine:</p> <p>At confluence with Linda Creek.....</p> <p>Just upstream of McClaren Drive.....</p> <p>Just downstream of Johnson Ranch Drive.....</p> <p>At East Roseville Parkway.....</p> <p>At eastern corporate limits.....</p> <p>Maps are available for inspection at City Hall, 316 Vernon Street, Roseville, California.</p> <p>San Bernardino County (unincorporated areas) (FEMA docket No. 6984)</p> <p>Lytle Creek:</p>		<p>Approximately 1,400 feet downstream of confluence of Middle Fork Lytle Creek with South Fork Lytle Creek.....</p> <p>At the confluence of South Fork Lytle Creek.....</p> <p>South Fork Lytle Creek:</p> <p>Approximately 800 feet upstream of the confluence with Middle Fork Lytle Creek.....</p> <p>Approximately 2,000 feet upstream of the confluence with Middle Fork Lytle Creek.....</p> <p>Approximately 3,650 feet upstream of the confluence of Middle Fork Lytle Creek.....</p> <p>Middle Fork Lytle Creek:</p> <p>At the confluence with South Fork Lytle Creek.....</p> <p>At South Fork Road.....</p> <p>At the confluence of North Fork Lytle Creek.....</p> <p>Approximately 3,400 feet upstream of South Fork Road.....</p> <p>Yucca Creek (at Joshua Tree):</p> <p>At Sunever Road.....</p> <p>At California Avenue.....</p> <p>At Sunset Road.....</p> <p>At Linda Lee Drive.....</p> <p>At Paxton Road.....</p> <p>Joshua Tree Creek:</p> <p>At the confluence with Yucca Creek.....</p> <p>At Rice Avenue.....</p> <p>At Sunburst Street.....</p> <p>Quail Wash:</p> <p>At the confluence with Joshua Tree Creek.....</p> <p>At Twenty-nine Palms Highway.....</p> <p>Approximately 4,300 feet upstream of Twenty-nine Palms Highway.....</p> <p>Little Chino Creek:</p> <p>At the confluence with Carbon Canyon Creek.....</p> <p>At Peyton Drive.....</p> <p>At Feldspar Avenue.....</p> <p>Approximately 575 feet upstream of Feldspar Avenue.....</p> <p>Carbon Canyon Creek:</p> <p>Approximately 100 feet downstream of Ramona Avenue.....</p> <p>Approximately 200 feet upstream of Pipeline Avenue.....</p> <p>At the confluence of Little Chino Creek.....</p> <p>At English Place.....</p> <p>Just upstream of English Road.....</p> <p>San Timoteo Creek:</p> <p>At the City of Loma Linda and San Bernardino County boundary.....</p> <p>At California Street.....</p> <p>At San Timoteo Canyon Road.....</p> <p>At Alesandro Road.....</p> <p>At San Bernardino County Boundary.....</p> <p>Morey Arroyo:</p> <p>At the intersection of Orange Avenue and Iowa Street.....</p> <p>At the intersection of Park Avenue and California Street.....</p> <p>The Zarja:</p> <p>The area from New Jersey Street to Iowa Street within 700 feet north of the Zarja.....</p> <p>Maps are available for review at the San Bernardino County Government Center, Land Development Section, 385 North Arrowhead Avenue, San Bernardino, California.</p> <p>Santa Barbara County (unincorporated areas) (FEMA docket No. 6975)</p> <p>San Jose Creek:</p> <p>At the confluence with San Pedro Creek.....</p> <p>At Darford Drive Extended.....</p> <p>Just upstream of Hollister Avenue.....</p> <p>Just upstream of U.S. 101 westbound.....</p> <p>Approximately 100 feet upstream of U.S. 101.....</p> <p>Street Flow Along Hollister Avenue (Shallow Flooding):</p> <p>Approximately 120 feet west of Kellogg Avenue.....</p> <p>At the intersection of Pine Avenue and Hollister Avenue.....</p> <p>Rincon Creek:</p> <p>Approximately 150 feet upstream of the coast line.....</p> <p>Just downstream of U.S. 101 South Frontage Road.....</p> <p>Approximately 200 feet upstream of Southern Pacific Railroad.....</p>		<p>Approximately 100 feet downstream of Bates Road (County Road 3510).....</p> <p>Camaros Creek:</p> <p>Approximately 100 feet downstream of Los Cameros Road.....</p> <p>Just upstream of Los Cameros Road.....</p> <p>Approximately 600 feet upstream of Los Cameros Road.....</p> <p>Tecolito Creek:</p> <p>Approximately 1,160 feet downstream of U.S. Highway 101.....</p> <p>Approximately 260 feet downstream of U.S. Highway 101.....</p> <p>Approximately 550 feet upstream of U.S. Highway 101.....</p> <p>Buena Vista Creek (East Branch):</p> <p>At Las Fuentes Drive located upstream of the confluence of Buena Vista Creek (West Branch).....</p> <p>At East Valley Road.....</p> <p>Buena Vista Creek (West Branch):</p> <p>At Boundary Drive.....</p> <p>At East Valley Road.....</p> <p>Maps are available for review at the Santa Barbara County Flood Control Department, 123 East Anapamu Street, Santa Barbara, California.</p> <p>Sebastopol (city), Sonoma County (FEMA docket No. 6978)</p> <p>Laguna de Santa Rosa:</p> <p>At Sebastopol Avenue.....</p> <p>Maps are available for review at City Hall, 7120 Bodega Avenue, Sebastopol, California.</p> <p>Shasta County (unincorporated areas) (FEMA docket No. 6975)</p> <p>Churn Creek:</p> <p>Approximately 400 feet upstream of Interstate Highway 5.....</p> <p>Approximately 1,250 feet upstream of Oasis Road.....</p> <p>Approximately 100 feet above confluence with North Tributary Churn Creek.....</p> <p>Clover Creek (near Sacramento River):</p> <p>Approximately 525 feet upstream of Airport Road Bridge.....</p> <p>Just upstream of Hole-in-one Drive Bridge.....</p> <p>Just downstream of Lyel Lane.....</p> <p>Approximately 250 feet upstream of Sylvia Lane.....</p> <p>Approximately 1,750 feet upstream of Freeman Road.....</p> <p>Salt Creek:</p> <p>Approximately 1,250 feet downstream of Mandocino Street.....</p> <p>Approximately 350 feet downstream of Interstate Highway 5.....</p> <p>Approximately 1,875 feet upstream of Deer Creek Avenue.....</p> <p>Approximately 175 feet upstream of Front Street.....</p> <p>Approximately 1,200 feet upstream of Revlin Lane.....</p> <p>Torney Drain:</p> <p>Approximately 100 feet downstream of Sholley Lane.....</p> <p>At Merrill Lane.....</p> <p>Just downstream of Davey Way.....</p> <p>Newton Creek:</p> <p>At confluence with Churn Creek.....</p> <p>Just downstream of Oasis Road.....</p> <p>Approximately 2,700 feet upstream of Oasis Road.....</p> <p>Approximately 500 feet upstream of Southern Pacific Railroad.....</p> <p>Approximately 50 feet upstream of centerline of Lake Boulevard.....</p> <p>North Tributary Churn Creek:</p> <p>Approximately 50 feet upstream of confluence with Churn Creek.....</p> <p>Approximately 150 feet upstream of Ashby Road.....</p> <p>Approximately 60 feet upstream of Southern Pacific Railroad.....</p> <p>Approximately 220 feet upstream of Twin Lakes Mobile Home Park office.....</p> <p>Buckeye Creek:</p>	

Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)
Just above confluence with Churn Creek.....	*631	Maps are available for review at Town Hall, Department of Public Works, 209 East Main Street, Rangely, Colorado		Just downstream of the Union Pacific Railroad Bridge.....	*2,420
Approximately 60 feet upstream of Oasis Road.....	*658			Maps are available for review at City Hall, 15 North Dewey Avenue, Middleton, Idaho.	
Approximately 160 feet upstream of Belt Line Road.....	*684			Valley County (unincorporated areas) (FEMA docket No. 6975)	
Approximately 20 feet downstream of Southern Pacific Railroad.....	*701	Weld County (unincorporated areas) (FEMA docket No. 6984)		North Fork Payette River:	
Maps are available at the Shasta County Water Agency, 1670 Market Street, Suite 240, Red- ding, California.		Coal Creek:		Approximately 16,350 feet downstream of State Highway 55 Bridge.....	*4,725
Sutter Creek (city), Amador County (FEMA docket No. 6978)		Approximately 450 feet downstream of Perry Street.....	*5,022	Approximately 3,500 feet downstream of State Highway 55 Bridge.....	*4,729
Sutter Creek		Approximately 2,200 feet upstream of Perry Street.....	*5,033	Approximately 4,800 feet upstream of State Highway 55 Bridge.....	*4,732
Approximately 300 feet upstream of the sewage treatment plant.....	*1,154	Approximately 500 feet downstream of Cotton- wood Extension Ditch.....	*5,041	Approximately 10,400 feet upstream of State Highway 55 Bridge.....	*4,736
Just upstream of the Amelia Street Extension.....	*1,172	Approximately 10,800 feet upstream of Cotton- wood Extension Ditch.....	*5,064	Approximately 10,150 feet downstream of con- fluence with Williams Creek.....	*4,901
At the State Highway 49/Main Street Bridge.....	*1,187	Maps are available for review at Department of Planning, 915 10th Street, Greeley, Colorado.		Approximately 200 feet downstream of conflu- ence with Williams Creek.....	*4,918
Approximately 50 feet upstream of the foot- bridge near Eureka Trail Extension.....	*1,193	CONNECTICUT		Approximately 5,450 feet upstream of Unnamed Bridge that is 3,050 feet upstream of conflu- ence with Williams Creek.....	*4,937
At the eastern corporate limits.....	*1,197	Waterford (town), New London County (FEMA docket No. 6975)		Approximately 13,750 feet upstream of Un- named Bridge that is 3,050 feet upstream of confluence with Williams Creek.....	*4,980
Maps are available for review at City Hall, 18 Main Street, Sutter Creek, California.		Niantic River:		Maps are available for review at the County Building Official's Office, Courthouse Annex, 108 West Spring Street, Cascade, Idaho.	
Tuolumne County (unincorporated areas) (FEMA docket No. 6975)		Along Old Mill Road.....	*10	INDIANA	
Sullivan Creek:		At Summer Rest Road extended.....	*10	Allen County (unincorporated areas) (FEMA docket No. 6975)	
Approximately 50 feet downstream of State Highway 108.....	*1,983	Niantic Bay:		Willow Creek:	
Just upstream of Potato Ranch Road.....	*2,405	At corporate limits.....	*14	At mouth.....	*810
At Paso de Los Portales Road.....	*2,413	At Millstone Nuclear Access Road extended.....	*16	At confluence.....	*825
At Hidden Valley Road.....	*2,617	Long Island Sound:		Hatch Ditch:	
Approximately 250 feet upstream of Crestview Drive.....	*2,658	At Amtrack extended.....	*16	At mouth.....	*825
Maps are available for review at the Tuolumne County Planning Department, 2 South Green Street, Sonoma, California.		At White Point.....	*15	About 600 feet upstream of Shoaff Road.....	*835
Ventura County (unincorporated areas) (FEMA docket No. 6978)		Jordan Cove:		Willow Creek Branch No. 8:	
Rincon Creek:		South Side of Jordan Cove Road.....	*13	At mouth.....	*820
Approximately 1,125 feet downstream of U.S. Highway 101 southbound bridge.....	*10	At Baldwin Drive extended.....	*10	Just downstream of North County Line Road.....	*845
Just downstream of the Southern Pacific Rail- road.....	#1	Goshen Cove:		Willow Creek Branch No. 7:	
Approximately 125 feet upstream of the South- ern Pacific Railroad.....	*40	North side of Great Neck Road.....	*10	At mouth.....	*825
Approximately 100 feet downstream of the Bates Road Bridge.....	*70	Alewile Cove:		Just downstream of Lima Road.....	*836
Maps are available for review at the Depart- ment of Public Works, 800 South Victoria Avenue, Ventura, California.		Along Shore Drive.....	*10	Ringwall Ditch:	
COLORADO		At Niles Hill Road No. 1 extended.....	*10	At mouth.....	*810
El Paso County, (unincorporated areas) (FEMA docket No. 6978)		Maps available for inspection at the Town Hall, Rope Ferry Road, Waterford, Connecticut.		Just downstream of Abandoned Railroad.....	*818
Dirty Woman Creek:		IDAHO		Cedar Creek:	
Just downstream of Mitchell Avenue.....	*6,879	Bancroft (city), Caribou County (FEMA docket No. 6975)		At mouth.....	*778
Just upstream of Mitchell Avenue.....	*6,886	Portneuf River:		Just downstream of North County Line Road.....	*816
Just upstream of the Denver and Rio Grande Railroad.....	*6,895	At the intersection of Center Street and Third Avenue West.....	*5,419	Little Cedar Creek:	
Just upstream of Old Denver Highway.....	*6,925	Maps are available for review at City Hall, 23 South Main Street, Bancroft, Idaho.		At mouth.....	*811
Just downstream of Interstate Highway 85/87.....	*6,950	Canyon County (unincorporated areas) (FEMA docket No. 6975)		Just downstream of County Boundary.....	*818
Crystal Creek:		Boise River:		Geller Ditch:	
At the confluence with Monument Lake.....	*6,920	Approximately 6,460 feet downstream of Union Pacific Railroad Crossing.....	*2,338	Just downstream of Hand Road.....	*829
Just upstream of Davidson Street.....	*6,948	Approximately 240 feet downstream of U.S. Highway 84.....	*2,354	Just downstream of Conrail.....	*836
Just upstream of Abandoned Railroad Bridge.....	*6,999	Just upstream of Plymouth Street Bridge.....	*2,366	Just upstream of Conrail.....	*848
At Beacon Light Road.....	*7,013	Approximately 2,300 feet upstream of Plymouth Street Bridge.....	*2,365	About 1,400 feet upstream of State Route 3.....	*849
At the Unnamed Road, approximately 1,100 feet upstream of Beacon Light Road.....	*7,044	Willow Creek:		St. Joseph River:	
Maps are available for inspection at the Re- gional Building Office, 101 West Costilla, Colo- rado Springs, Colorado.		At confluence with Boise River.....	*2,381	About 2,100 feet downstream of confluence of Salady Ditch.....	*769
Rangely (town), Rio Blanco County (FEMA docket No. 6984)		Just upstream of Sewage Lagoon Bridge.....	*2,386	About 1.3 miles upstream of Norfolk Southern Railroad.....	*792
White River:		At farm bridge 2,000 feet upstream of Sewage Lagoon Bridge.....	*2,392	Seegar Ditch:	
At the confluence of Douglas Creek.....	*5,221	Just downstream of Railroad Bridge.....	*2,420	At mouth.....	*806
Just downstream of the levee extending north from the Rangely Airport.....	*5,237	Maps are available for review at the Canyon County Courthouse, 1115 Albany Street, Cald- well, Idaho.		Just upstream of Washington Center Road.....	*846
Just past the end of the northeast runway at Rangely Airport.....	*5,240	Middleton (city), Canyon County (FEMA docket No. 6978)		Benward Ditch:	
		Willow Creek:		At confluence of Bobay Ditch.....	*834
		Just upstream of the confluence with the Boise River.....	*2,381	About 300 feet downstream of U.S. Route 33.....	*843
		Approximately 500 feet upstream of the sewage lagoon bridge, at the City of Middleton corpo- rate limits.....	*2,387	Bobay Ditch:	
		Approximately 1,450 feet downstream of State Highway 44, at the corporate limits.....	*2,394	At mouth.....	*834
		Just upstream of the Concord Street Bridge.....	*2,410	About 0.8 miles upstream of Fritz Road.....	*840
				Spy Run Creek:	
				Just upstream of Washington Center Road.....	*803
				Just upstream of Graham Drive.....	*826
				Waters Ditch:	
				At mouth.....	*787
				Just downstream of Coldwater Road.....	*801
				Beckets Run:	
				Just upstream of Leo Road.....	*771
				Just downstream of abandoned railroad.....	*813
				Just upstream of abandoned railroad.....	*819
				At confluence of Huguenard No. 2.....	*827
				Swift Ditch:	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just downstream of Leo Road.	*778	About 400 feet downstream of South County Line Road.	*777	Just downstream of Temple Timbers Road	*800
Just downstream of Interstate 69	*788	<i>Houk Ditch:</i>		<i>Brown Ditch:</i>	
<i>Schoppman Ditch:</i>		Just upstream of Flatrock Road.	*818	At mouth.	*793
About 900 feet upstream of St. Joe Road.	*765	Just downstream of Emehisar Road	*830	Just downstream of Whitten Road	*796
About 1,000 feet upstream of Brookwood Drive	*782	<i>Suter Ditch:</i>		<i>Flatrock Creek:</i>	
<i>Salaty Ditch:</i>		At mouth.	*780	Just downstream of Hoffman Road.	*777
At mouth.	*769	Just downstream of Coverdale Road.	*791	Just downstream of Lortie Road.	*784
Just downstream of Salge Drive.	*787	<i>Robinson Creek:</i>		<i>Adam Scheimmer Baker Drain:</i>	
<i>Tiemon Ditch:</i>		At mouth.	*758	Just downstream of Flatrock Road.	*786
At mouth.	*772	At confluence of Brindle Ditch.	*791	Just downstream of Hoagland Road.	*797
About 0.7 miles upstream of Schwartz Road.	*814	<i>Brindle Ditch:</i>		<i>Huguenard No. 2:</i>	
<i>Roy Delegrange Ditch:</i>		At mouth.	*791	At confluence with Becketts Run.	*827
At mouth.	*811	Just downstream of Pleasant Center Road.	*798	Just upstream of Till Road.	*831
Just downstream of Auburn Road.	*826	<i>Woods Ditch:</i>		<i>Edgerton-Carson Ditch:</i>	
<i>Ely Run:</i>		At mouth.	*791	At mouth.	*743
At mouth.	*775	About 2,200 feet downstream of Yoder Road.	*811	Just downstream of State Route 101	*747
Just downstream of U.S. Route 27	*819	<i>Abolite Creek:</i>		<i>St. Marys Flowage:</i> Within community	*756
<i>Beighlie-Hettelhorst Ditch:</i>		About 350 feet downstream of Powell Road.	*756	Maps available for inspection at the Surveyor's Office, City/County Building, Ft. Wayne, Indiana.	
At mouth.	*780	At confluence of Beal Taylor Ditch.	*796		
Just downstream of Viberg Road.	*817	<i>Beal Taylor Ditch:</i>			
<i>Smith Northrup Drain:</i>		At mouth.	*796		
At mouth.	*777	Just downstream of West County Line Road	*836		
About 1,300 feet upstream of Metosh Trail	*796	<i>Bichecoff Ditch:</i>			
<i>Ravert Ditch:</i>		At mouth.	*767		
At mouth.	*790	Just downstream of County Line Road.	*788		
Just downstream of Wheelock Road.	*800	<i>Big Indian Creek:</i>			
<i>Mower Ditch:</i>		At mouth.	*780		
At mouth.	*772	Just downstream of County Line Road.	*804		
About 700 feet upstream of Center Road.	*782	<i>Martin Ditch at St. Joseph's River:</i>			
<i>Sumile Creek:</i>		At mouth.	*771		
At mouth.	*748	About 500 feet upstream of Leo Road.	*788		
At confluence of Koester Ditch.	*757	<i>Natural Drain No. 2:</i>			
<i>Koester Ditch:</i>		At mouth.	*805		
At mouth.	*757	Just downstream of Washington Center Road.	*808		
At confluence of Langley Ditch.	*772	<i>Little River:</i>			
<i>Langley Ditch:</i>		At County Boundary	*755		
At mouth.	*777	At confluence with Robinson Creek.	*758		
At confluence of Grice Ditch.		<i>Dumell Ditch:</i>			
<i>Kaumeo River:</i>		At mouth.	*767		
About 1.0 miles downstream of Scipio Road.	*724	Just upstream of Hadley Road.	*830		
Just downstream of U.S. Route 30	*754	<i>Graham McCulloch Ditch:</i>			
<i>Marsh Ditch:</i>		At mouth.	*755		
At mouth.	*728	Just downstream of old railroad grade	*756		
Just upstream of confluence of Hetrick Ditch.	*744	Just upstream of old railroad grade	*762		
<i>Hatley Ditch:</i>		At confluence with Flaugh Ditch.	*767		
At mouth.	*806	<i>Flaugh Ditch:</i>			
Just upstream of Norfolk Southern Railway.	*813	At mouth.	*767		
<i>Whitmer Ditch:</i>		About 750 feet upstream of Kroemer Road.	*822		
At mouth.	*781	<i>Graham McCulloch Natural Drain No. 7:</i>			
Just downstream of Main Street.	*806	About 1,300 feet upstream of Dickie Road.	*797		
Just upstream of Main Street.	*812	<i>Junk Ditch:</i> Within community	*756		
About 650 feet upstream of Main Street.	*812	<i>Doctor Ditch:</i>			
<i>Black Creek:</i>		At mouth.	*767		
At confluence of Reichelderfer Ditch.	*749	About 300 feet downstream of Paulding Road.	*778		
Just upstream of Antwerp Road.	*780	<i>Lawrence Branch:</i>			
<i>Reichelderfer Ditch:</i>		At mouth.	*776		
At mouth.	*749	Just downstream of Covington Road.	*783		
About 1600 feet upstream of Hamm Road.	*764	<i>Lowther-Neuhaus Ditch:</i>			
<i>Fairfield Ditch:</i>		Just upstream of Conrail.	*783		
About 400 feet downstream of Lower Hunting- ton Road.	*767	Just downstream of State Boulevard	*787		
Just downstream of Lower Huntington Road.	*769	<i>Drain No. 6:</i>			
<i>Harber Ditch:</i>		At mouth.	*787		
At mouth.	*769	Just upstream of Butler Road.	*797		
Just downstream of Norfolk Southern Railway.	*795	<i>Bullerman Ditch:</i>			
Just upstream of Norfolk Southern Railway.	*801	At mouth.	*749		
Just downstream of Yoder Road.	*811	About 1,600 feet upstream of Putt Lane.	*793		
<i>Dennis Ditch:</i>		<i>Bullerman Branch:</i>			
At mouth.	*785	At mouth.	*777		
Just downstream of Doyle Road.	*794	About 0.34 miles upstream of Stielthorn Road.	*781		
<i>Dannenfelser-Cochett Ditch:</i>		<i>Bender Ditch:</i>			
About 1,500 feet downstream of Selma Drive.	*781	Just upstream of Seiler Road.	*771		
Just downstream of Doyle Road.	*785	Just downstream of Tillman Road.	*796		
<i>Bender Ditch:</i>		<i>Adams Ditch:</i>			
At mouth.	*759	At mouth.	*774		
Just downstream of Tillman Road.	*796	Just downstream of Conrail.	*790		
<i>Depimer Ditch:</i>		<i>Schmidt Ditch:</i>			
At mouth.	*795	At mouth.	*771		
Just downstream of County Line Road.	*809	Just downstream of Tillman Road.	*794		
<i>Snyder Ditch:</i>		<i>Eightmile Creek:</i>			
At mouth.	*769	Just downstream of Hamilton Road.	*764		
Just downstream of Connors Road.	*801	About 800 feet upstream of Interstate 68.	*772		
<i>Trier Ditch:</i>		<i>Witzgall Ditch:</i>			
At mouth.	*750	Just upstream of County Line Road.	*788		
Just downstream of Paulding Road.	*769	Just downstream of Yoder Road.	*802		
<i>Paul Trier Ditch:</i> Within community.	*771	<i>Johnson Ditch:</i>			
<i>St. Marys River:</i>		At mouth.	*788		
Just upstream of Lower Huntington Road.	*766				

INDIANA

Fort Wayne (city), Allen County (FEMA docket
No. 6975)

<i>Natural Drain No. 7:</i>	
At mouth.	*815
About 350 feet upstream of Hatfield Road.	*820
<i>Spy Run Creek:</i>	
At mouth.	*758
Just upstream of Washington Center Road.	*803
<i>Krammer Ditch:</i>	
At mouth.	*766
Just upstream of Woodbrook Drive.	*774
<i>Sumner Drain:</i>	
At mouth.	*764
Just upstream of Stratton Road.	*795
<i>Becketts Run:</i>	
At mouth.	*767
Just downstream of Leo Road.	*771
<i>Swift Ditch:</i>	
At mouth.	*769
Just downstream of Leo Road.	*779
<i>Schoppman Ditch:</i> Within community.	*765
<i>Fairfield Ditch:</i>	
At mouth.	*763
Just downstream of Lower Huntington Road.	*769
<i>Harber Ditch:</i>	
At mouth.	*769
Just downstream of Bear Field Thruway.	*775
<i>Junk Ditch:</i>	
At mouth.	*760
About 1,900 feet downstream of Smith Road.	*756
<i>St. Marys River:</i>	
At mouth.	*758
About 1.9 miles upstream of Lower Huntington Road.	*768
<i>Flaugh Ditch:</i>	
Just upstream of West Jefferson Boulevard.	*777
Just downstream of State Route 14.	*793
<i>Lawrence Branch:</i>	
At Covington Road.	*783
About 0.48 miles upstream of Wilkie Drive.	*788
<i>Trier Ditch:</i>	
About 300 feet upstream of Wayne Trace.	*769
About 1,150 feet upstream of Tillman Road.	*771
<i>Paul Trier Ditch:</i> Within community.	*771
<i>Natural Drain No. 2:</i>	
Just upstream of Washington Center Road.	*808
At confluence of Natural Drain No. 7.	*815
<i>Robinson Creek:</i>	
About 1,200 feet upstream of Smith Road.	*784
About 1,100 feet downstream of confluence of Woods Ditch.	*789
<i>Pearson Ditch:</i>	
At mouth.	*754
Just downstream of Lake Avenue.	*758
Just upstream of Lake Avenue.	*766
Just downstream of State Boulevard.	*773
<i>Lowther Neuhaus Ditch:</i>	
At mouth.	*776
About 550 feet upstream of Westgate.	*788
<i>Drain No. 6:</i>	
Just downstream of Butler Road.	*797
Just downstream of Coliseum Boulevard West.	*818
<i>St. Joseph River:</i>	
At mouth.	*758
About 1,600 feet downstream of confluence of Salaty Ditch.	*769

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maumee River:		About 4,000 feet upstream of U.S. Highway 54.....	*986	Plays 11:	
About 1.7 miles upstream of Landin Road.....	*751	Neosho River:		At intersection of Clay Avenue and Ohio Street.....	*2,842
At confluence of St. Marys River.....	*757	About 3,600 feet downstream of Bridge Street.....	*934	Plays 12:	
Unnamed Tributary No. 1:		About 2.0 miles upstream of Missouri Pacific Railroad.....	*958	Just west of intersection of Western Avenue and Cain Avenue.....	*2,852
At mouth.....	*764	Coon Creek:		Plays 13:	
Just downstream of Crescent Avenue.....	*768	At confluence with Neosho River.....	*954	Just south of Pancake Boulevard between Pennsylvania Avenue and New York Avenue.....	*2,838
Maps available for inspection at the City/County Building, 7th Floor, Ft. Wayne, Indiana.		Just upstream of Kentucky Street.....	*989	Plays 15:	
Grabill (town), Allen County (FEMA docket No. 6975)		Tributary to Coal Creek:		Just northwest of intersection of Harold Boulevard and Kansas Avenue.....	*2,846
Wilmar Ditch: Within community.....	*812	Just downstream of Wolf Creek.....	*939	Plays 17:	
Maps available for inspection at the Town Hall, First Street, Grabill, Indiana.		Just downstream of Atchinson Topeka and Santa Fe Railway.....	*949	Just northwest of intersection of Clay Street and Walnut Street.....	*2,844
Huntersville (town), Allen County (FEMA docket No. 6975)		Just upstream of Atchinson Topeka and Santa Fe Railway.....	*957	Maps available for inspection at the City Hall, 325 North Washington, Liberal, Kansas.	
Willow Creek:		About 850 feet upstream of Central Street.....	*961	Mulvane (city), Sedgwick and Sumner Counties (FEMA docket No. 6975)	
About 400 feet upstream of confluence of Willow Creek Branch No. 8.....	*819	Cannon Creek:		Arkansas River:	
Just upstream of Hunter Road.....	*824	Just upstream of North 9th Street.....	*957	About 5,300 feet downstream of County Road.....	*1,207
Willow Creek Branch No. 7:		Just upstream of North 10th Street.....	*959	Just downstream of Atchinson, Topeka, and Santa Fe Railway.....	*1,216
About 500 feet upstream of Conrail.....	*834	Maps available for inspection at the County Courthouse, 1 North Washington, Iola, Kansas.		Cow Creek Cutoff:	
Just downstream of Lima Road.....	*838	Arlington (city), Reno County (FEMA docket No. 6941)		At mouth.....	*1,218
Willow Creek Branch No. 8:		North Fork Neosho River:		Just downstream of low water spillway.....	*1,221
About 450 feet upstream of mouth.....	*821	About 0.96 mile downstream of Main Street.....	*1,564	Cow Creek:	
About 900 feet upstream of Shoaff Road.....	*822	Just downstream of State Highway 61.....	*1,573	Just upstream of low water spillway.....	*1,223
Maps available for inspection at the Engineering Office, 15617 Lima Road, Huntersville, Indiana.		Just upstream of the St. Louis Southwestern Railway.....	*1,586	About 1,500 feet upstream of Hillside Road.....	*1,227
Monroeville (town), Allen County (FEMA docket No. 6975)		Just upstream of Sego Road.....	*1,586	Maps available for inspection at the Building Inspector's Office, City Hall, 211 North Second Street, Mulvane, Kansas.	
Flatrock Creek:		Maps available for inspection at the City Offices, Arlington, Kansas.		Nickerson (city), Reno County (FEMA docket No. 6941)	
About 1,000 feet upstream of Monroeville Road.....	*780	Bassett (city), Allen County (FEMA docket No. 6978)		Bull Creek:	
Just upstream of confluence of Adam Schlemmer Baker Drain.....	*781	Elm Creek:		About 1,600 feet upstream of Riverton Road.....	*1,592
Adam Schlemmer Baker Drain:		Within community.....	*952	About 3,400 feet upstream of Nickerson Road.....	*1,602
At mouth.....	*781	Maps available for inspection at the City Hall, Iola, Kansas.		Arkansas River:	
Just downstream of Flatrock Road.....	*788	Hutchinson (city), Reno County (FEMA docket No. 6978)		Just downstream of Nickerson Road.....	*1,591
Maps available for inspection at the Clerk Treasurer's Office, 202 Summit, Monroeville, Indiana.		Plum Creek:		About 700 feet downstream of Centennial Road.....	*1,602
New Haven (city), Allen County (FEMA docket No. 6975)		Just upstream of 30th Avenue.....	*1,534	Maps available for inspection at the City Hall, Nickerson, Kansas.	
Dannofelder-Cocholt Ditch:		Just upstream of West 43rd Avenue.....	*1,544	Pretty Prairie (city), Reno County (FEMA docket No. 6941)	
At mouth.....	*757	Kisika Creek: Within community.....	*1,514	Smoots Creek:	
About 1,500 feet downstream of Selma Drive.....	*781	Kisika Creek Tributary:		Just upstream of Pretty Prairie Road.....	*1,562
Trier Ditch:		About 0.34 mile downstream of East 4th Avenue.....	*1,514	Just downstream of Dean Road.....	*1,565
At mouth.....	*750	Just downstream of East 4th Avenue.....	*1,518	Smoots Creek Tributary:	
Just downstream of Moeller Road.....	*762	Maps available for inspection at the City Hall, 125 East Avenue B, Hutchinson, Kansas.		Just downstream of Pretty Prairie Road.....	*1,562
Maumee River:		Tola (city), Allen County (FEMA docket No. 6978)		Just downstream of Main Street.....	*1,568
About 1.4 miles upstream of Bruick Road.....	*747	Coon Creek:		Maps available for inspection at the City Offices, 105 Plum Street, Pretty Prairie, Kansas.	
About 2.1 miles upstream of Landin Road.....	*751	Just upstream of U.S. Highway 54.....	*955	Reno County (unincorporated areas) (FEMA docket No. 6978)	
Bender Ditch:		Just upstream of Kentucky Street.....	*989	Arkansas River:	
At mouth.....	*759	Maps available for inspection at the City Hall, 2 West Jackson, Iola, Kansas.		About 500 feet downstream of the Atchinson, Topeka, & Santa Fe Railway.....	*1,535
Just upstream of Sailer Road.....	*771	Liberal (city), Seward County (FEMA docket No. 6978)		About 600 feet upstream of State Highway 98.....	*1,602
Maps available for inspection at the Clerk Treasurer's Office, 1235 Lincoln Highway, New Haven, Indiana.		Plays 4:		Cow Creek:	
Woodburn (city), Allen County (FEMA docket No. 6975)		About 2,000 feet northwest of intersection of Kansas Avenue and Tucker Road.....	*2,853	About 2.2 miles downstream of Pennington Road.....	*1,547
Edgerton-Carson Ditch:		Plays 5:		Just downstream of West 103rd Avenue.....	*1,580
Just upstream of Tile Mill Road.....	*743	About 2,000 feet west and 200 feet south of intersection of Kansas Avenue and Tucker Road.....	*2,854	Cow Creek Tributary A:	
About 1,300 feet upstream of Tile Mill Road.....	*746	Plays 6:		Just downstream of West 43rd Avenue.....	*1,548
Hetrick Ditch:		About 1,000 feet north of intersection of Western Avenue and 15th Street.....	*2,861	About 1,580 feet upstream West 69th Avenue.....	*1,564
Just upstream of Woodburn Road.....	*751	Plays 7:		Cow Creek Tributary B:	
Just upstream of State Route 101.....	*753	About 1,600 feet north and 500 feet west of intersection of Kansas Avenue and 15th Street.....	*2,848	At mouth.....	*1,553
Maps available for inspection at the Public Works Department, 4417 Bull Rapids Road, Woodburn, Indiana.		Plays 8:		About 0.95 mile upstream of West 69th Avenue.....	*1,571
KANSAS		Plays 9:		Cow Creek Tributary C:	
Allen County (unincorporated areas) (FEMA docket No. 6975)		About 1,000 feet south and 500 feet west of intersection of Kansas Avenue and 15th Street.....	*2,837	At mouth.....	*1,563
Elm Creek:		Plays 10:		About 0.9 mile upstream of West 82nd Avenue.....	*1,602
At confluence with Neosho River.....	*952	About 1,200 feet west of intersection of 15th Street and Country Estates Road.....	*2,826	Bull Creek:	
About 2.0 miles upstream of State Highway 269.....	*980			At confluence with Cow Creek.....	*1,568
Rock Creek:				About 0.7 mile upstream of Centennial Road.....	*1,602
At confluence with Elm Creek.....	*955			Plum Creek:	
				Just upstream of Lorraine Street.....	*1,537
				About 1.5 miles upstream of East 56th Avenue.....	*1,648
				Gar Creek:	
				About 1,100 feet downstream of Rayl Road.....	*1,451
				About 0.9 mile upstream of Irish Creek Road.....	*1,457
				Sand Creek:	

Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)
About 600 feet downstream of Morgan Avenue.....	*1,512	At mouth.....	*581	Bickham Bayou:	
Just downstream of the Missouri Pacific Rail- road.....	*1,533	About 1.3 miles upstream of State Route 169.....	*619	Approximately 0.6 mile downstream of down- stream corporate limits.....	*176
Just upstream of State Highway 96.....	*1,540	Maps available for inspection at the County Courthouse, Richmond, Kentucky.		At Pines Road.....	*213
Just upstream of Valley Pride Road.....	*1,550	Russell County (unincorporated Areas) (FEMA docket No. 6978)		Old River:	
Salt Creek:		Big Lily Creek:		At downstream corporate limits.....	*162
At mouth.....	*1,540	About 2,700 feet downstream of State Route 619.....	*750	Approximately 0.7 mile upstream of East 70th Street.....	*161
About 1.3 miles upstream of West 4th Avenue.....	*1,582	Just downstream of waterfalls.....	*760	Wallace Lake: Entire shoreline within community.....	*159
Salt Creek Tributary A:		Just upstream of waterfalls.....	*772	Caddo Lake: Entire shoreline within community.....	*184
At mouth.....	*1,591	About 0.9 mile upstream of Clear Springs Road.....	*899	Cross Lake: Entire shoreline within community.....	*176
Just downstream of West 4th Avenue.....	*1,582	Little Lily Creek:		Maps available for inspection at the Caddo Parish Courthouse, 501 Texas Street, Room 402, Shreveport, Louisiana.	
Just downstream of West 4th Avenue.....	*1,614	At mouth.....	*756		
Little Arkansas River:		About 1.4 miles upstream of Halkay Road.....	*1,017	MICHIGAN	
Just upstream of Rayl Road.....	*1,451	Cumberland Lake: Within community.....	*750	Holland (city), Ottawa and Allegan Counties (FEMA Docket No. 6978)	
About 1.3 miles upstream of Medora Road.....	*1,485	Maps available for inspection at the Judge/ Executive's Office, County Courthouse, James- town, Kentucky.		Macatawa River:	
Little Arkansas River Tributary A:		LOUISIANA		At mouth.....	*585
At mouth.....	*1,477	Caddo Parish (unincorporated areas) (FEMA docket No. 6974)		About 0.9 mile upstream of Paw Paw Drive.....	*597
About 2,100 feet upstream of East 69th Avenue..	*1,536	McCain Creek:		Lake Macatawa: Along shoreline.....	*585
Little Arkansas River Tributary B:		Approximately 550 feet downstream of down- stream corporate limits.....	*170	Maps available for inspection at the City Plan- ning and Engineering Department, City Hall, 270 River Avenue, Holland, Michigan.	
At mouth.....	*1,457	At State Route 173.....	*225	Holland (township), Ottawa County (FEMA docket No. 6978)	
About 2,900 feet upstream of East 43rd Avenue..	*1,524	Logan Bayou:		Macatawa River:	
Kisau Creek:		At the confluence with Cross Lake.....	*176	About 2,100 feet downstream of Butternut Drive..	*585
About 0.76 mile downstream of the Atchison, Topeka, & Santa Fe Railway.....	*1,489	At Pine Hill Road.....	*259	Just downstream of 96th Avenue.....	*600
Just downstream of East 4th Avenue.....	*1,514	Choctaw Bayou:		Lake Macatawa: Along shoreline.....	*585
Kisau Creek Tributary:		At the confluence with Logan Bayou.....	*178	County Drain No. 40:	
At mouth.....	*1,507	At Millwood Lane.....	*234	At mouth.....	*592
Just downstream of East 4th Avenue.....	*1,518	Page Bayou:		Just downstream of U.S. Highway 31.....	*592
North Fork Ninnescash River:		At the confluence with Cross Lake.....	*176	Noordeloos Creek:	
About 1,430 feet downstream of Castleton Road.....	*1,549	At Jefferson Paige Road.....	*266	About 1,775 feet downstream of 107th Avenue....	*597
About 1.2 miles upstream of Sego Road.....	*1,587	Page Bayou Tributary A:		About 575 feet upstream of U.S. Highway 21.....	*597
Smoots Creek:		At the confluence with Page Bayou.....	*209	Tulip Intercounty Drain:	
Just upstream of Boundary Road.....	*1,549	Approximately 1,800 feet upstream of conflu- ence.....	*220	At mouth.....	*598
About 0.87 mile upstream of Dean Road.....	*1,582	Buchanan Bayou:		About 2,350 feet upstream of Adams Street.....	*598
Smoots Creek Tributary:		At the confluence with Boggy Bayou.....	*159	Secondary Channel:	
At mouth.....	*1,551	At State Route 525.....	*265	Just upstream of 104th Street.....	*598
About 275 feet upstream of Booth Street.....	*1,566	Buchanan Bayou Tributary A:		At divergence with Macatawa River.....	*598
Silver Creek Tributary:		At the confluence with Buchanan Bayou.....	*233	Maps available for inspection at the Township Hall, 353 N. 120th Avenue, Holland, Michigan.	
About 1,850 feet downstream of Brownlee Road.....	*1,729	At State Route 525.....	*249	MINNESOTA	
About 450 feet upstream of Sun City Road.....	*1,753	Brush Bayou:		Lake of the Woods County (unincorporated areas) (FEMA docket No. 6975)	
Maps are available for inspection at the Public Works Department, County Courthouse, 206 West First, Hutchinson, Kansas.		At the confluence with Boggy Bayou.....	*159	Lake of the Woods:	
South Hutchinson (city), Reno County (FEMA docket No. 6941)		Approximately 0.6 mile upstream of upstream corporate limits.....	*163	Along shoreline, within county.....	*1064
Arkansas River:		Boggy Bayou:		Maps available for inspection at the Office of the Zoning Administrator, County Courthouse, Baudette, Minnesota.	
About 500 feet downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,535	At the confluence with Cypress Bayou.....	*159	MISSISSIPPI	
About 900 feet upstream of Atchison, Topeka, and Santa Fe Railway.....	*1,538	Approximately 4.5 miles upstream of Providence Road.....	*278	Scooba (town), Kemper County (FEMA docket No. 6969)	
Maps available for inspection at the City Of- fices, 2 South Main Street, South Hutchinson, Kansas 67505.		Gilmer Bayou:		Little Scooba Creek:	
Turon (city), Reno County (FEMA docket No. 6941)		At the confluence with Boggy Bayou.....	*167	About 0.5 mile downstream of State Highway 16.....	*186
Silver Creek Tributary:		At Buncombe Road.....	*218	About 0.7 mile upstream of county road.....	*199
About 1,860 feet upstream of Brownlee Road.....	*1,742	Southwood High Lateral:		Maps available for inspection at the Town Clerk's Office, Town Hall, 1037 Kemper Street, Scooba, Mississippi.	
About 2,450 feet upstream of Brownlee Road.....	*1,745	At the confluence with Gilmer Bayou.....	*182	MISSOURI	
Maps available for inspection at the City Hall, Turon, Kansas.		Approximately 1.3 miles upstream of confluence..	*196	New Madrid County (unincorporated areas) (FEMA docket No. 6975)	
Willowbrook (city), Reno County (FEMA docket No. 6941)		Industrial Park Lateral:		Shallow flooding (St. John's Bayou (Main Ditch)):	
Cow Creek:		At the confluence with Gilmer Bayou.....	*173	At intersection of New Madrid Frontline and Birds Point—New Madrid set back levee.....	*301
About 0.9 mile downstream of 50th Avenue.....	*1,558	Approximately 200 feet upstream of State Route 526 (Industrial Loop Expressway).....	*215	At county boundary.....	*309
About 1,500 feet upstream of 50th Avenue.....	*1,562	Lincoln Memorial Park Lateral:		Shallow flooding (Birds Point—New Madrid Set Back Levee Ditch):	
Maps available for inspection at the home of Mrs. Robert Wiley, Willowbrook, Kansas.		At the confluence with Industrial Park Lateral.....	*184	Within community.....	*301
KENTUCKY		Approximately 0.8 mile upstream of State Route 526 (Flournoy Lucas.....	*219	Shallow flooding (North Cut Ditch):	
Madison County (unincorporated Areas) (FEMA docket No. 6978)		Boggy Bayou Tributary A:		At mouth.....	*303
Kentucky River:		At the confluence with Boggy Bayou.....	*198	At county boundary.....	*308
County boundary.....	*572	At Bicknell Ranch Road.....	*271	New Madrid County (unincorporated areas) (FEMA docket No. 6975)	
About 850 feet upstream of confluence of Tate Creek.....	*582	Boggy Bayou Tributary B:		Shallow flooding (St. John's Bayou (Main Ditch)):	
Tate Creek:		At the confluence with Boggy Bayou.....	*205	At intersection of New Madrid Frontline and Birds Point—New Madrid set back levee.....	*301
		Approximately 1.1 miles upstream of Buncombe Road.....	*283	At county boundary.....	*309
		Bayou Pierre:		Shallow flooding (Birds Point—New Madrid Set Back Levee Ditch):	
		At State Route 175.....	*153	Within community.....	*301
		At Union Pacific Railroad.....	*162	Shallow flooding (North Cut Ditch):	
		Sand Beach Bayou:		At mouth.....	*303
		At the confluence with Bayou Pierre.....	*158	At county boundary.....	*308
		Approximately 1.5 miles upstream of Industrial Loop Expressway.....	*164	Shallow flooding (Ditch No. 1):	
		Galaxy Lateral:			
		At the downstream corporate limits.....	*176		
		Approximately 110 feet upstream of upstream corporate limits.....	*196		

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 1.0 miles downstream of U.S. Highway 62.....	*280	At the intersection of Gamebird Road and Pah-rump Valley Boulevard.....	#1	Hoosic River:	
About 3.1 miles upstream of St. Louis South-western Railway.....	*283	Maps are available for review at Nye County Department of Planning, 377 North Jackson, Tonopah, Nevada.....		Approximately 100 feet downstream of the downstream corporate limits.....	*280
Shallow flooding (Dry Run Ditch):				Approximately 1,200 feet downstream of the upstream corporate limits.....	*356
At New Madrid Frontline Levee.....	*297			Maps available for inspection at the Town Hall, Route 110, Tomhannock, New York.	
About 0.7 mile upstream of County Highway P.....	*301				
Shallow flooding (Main Ditch No. 1):		NEW MEXICO			
About 1.7 miles downstream of County Highway 828.....	*293	Luna County (unincorporated areas) (FEMA docket No. 6975)			
At county boundary.....	*300	Mimbres River:		NORTH CAROLINA	
Shallow flooding (Ash Slough Ditch):		Approximately 7.2 miles downstream of State Route 377.....	*4,149	Avery County (unincorporated areas) (FEMA docket No. 6978)	
About 1.7 miles downstream of County Highway 828.....	*294	Approximately 2.7 miles upstream of State Route 377.....	*4,290	Elk River:	
At county boundary.....	*300			About 300 feet upstream of SR 1341.....	*3686
Mississippi River:		Maps available for inspection at the Luna County Courthouse, Deming, New Mexico.		About 3,650 feet upstream of SR 1341.....	*3779
At west county boundary.....	*293			Linville River:	
At south county boundary.....	*314			Just upstream of Land Harbors Dam.....	*3540
Birds Point—New Madrid Floodway:		NEW YORK		About 4,300 feet upstream of Road E.....	*3695
At intersection of New Madrid Frontline Levee and Birds Point—New Madrid Set Back Levee.....	*304	Hancock (town), Delaware County (FEMA docket No. 6978)		West Fork:	
At county boundary.....	*309	Delaware River:		At mouth.....	*3636
Shallow flooding (Lower Main Ditch No. 10):		Approximately 400 feet downstream of corporate limits.....	*641	About 700 feet upstream of SR 1351.....	*3684
Within community.....	*301	At the confluence of the East Branch Delaware River and West Branch Delaware River.....	*904	Maps available for inspection at the Building Official's Office, County Courthouse, Main Street, Newland, North Carolina.	
Shallow flooding (Lower Maple Slough Ditch):		East Branch Delaware River:		Creedmoor (city), Granville County (FEMA docket No. 6975)	
Within community.....	*301	At confluence with Delaware River.....	*904	Ledge Creek:	
Shallow flooding (Upper Maple Slough Ditch):		At upstream corporate limits.....	*1,060	About 1,700 feet downstream of U.S. Route 15.....	*275
Within community.....	*301	West Branch Delaware River:		Just downstream of Lake Rogers Dam.....	*282
Shallow flooding (Main Ditch No. 10):		At downstream corporate limits.....	*914	Just upstream of Lake Rogers Dam.....	*288
At mouth.....	*301	At upstream corporate limits.....	*948	About 1.0 mile upstream of Lake Rogers Dam.....	*290
At county boundary.....	*302	Beaver Kill:		Maps available for inspection at the City Hall, Creedmoor, North Carolina.	
Shallow flooding (Ash Slough Ditch (Lateral No. 2)):		At confluence with East Branch Delaware River.....	*1,012		
At mouth.....	*301	At upstream corporate limits.....	*1,109	Granville County (unincorporated areas) (FEMA docket No. 6975)	
At county boundary.....	*303	Cadosia Creek:		Tabbs Creek:	
Shallow flooding (Portage Bayou (Main Ditch)):		At confluence with East Branch Delaware River.....	*918	At county boundary.....	*286
About 0.8 mile downstream of Interstate 55.....	*277	At upstream corporate limits.....	*1,214	About 500 feet upstream of Tom Parham Road.....	*420
Just downstream of Interstate 55.....	*278	Fish Creek:		Tar River:	
Shallow flooding (Portage Open Bay):		At confluence with East Branch Delaware River.....	*976	Just upstream of Cannadys Mill Road.....	*289
About 1.6 miles downstream of Interstate 55.....	*277	Approximately 0.7 mile upstream of confluence of Tributary to Fish Creek.....	*1,089	About 1,800 feet upstream of Old Route 75.....	*360
About 1.2 miles upstream of Interstate 55.....	*278	Tributary to Fish Creek:		Jackson Creek:	
Shallow flooding (Little River):		At confluence with Fish Creek.....	*1,012	At mouth.....	*361
Within community.....	#2	Approximately 1,280 feet upstream of County Route 28.....	*1,114	About 2,400 feet upstream of Old Route 75.....	*431
Shallow flooding (Otter Slough Ditch):		Humphries Brook:		Ledge Creek:	
Within community.....	#2	At confluence with Delaware River.....	*867	About 0.82 mile upstream of Lake Rogers Dam.....	*289
Shallow flooding (Ash Slough Ditch):		Approximately 1,600 feet upstream of Sand Pond Dam.....	*1,280	Just downstream of Interstate 85.....	*310
About 1.7 miles downstream of County Highway 828.....	#2	Trout Brook:		Just upstream of Interstate 85.....	*316
At mouth.....	#2	At confluence with Beaver Kill.....	*1,037	About 1,400 feet upstream of Old Route 75.....	*412
Shallow flooding (Portage Open Bay):		Approximately 520 feet downstream of Burn-wood Road.....	*1,057	Knapp of Reeds Creek:	
Within community.....	#2	Bear Brook:		About 6.0 miles downstream of SR 1120.....	*263
Shallow flooding (Ditch No. 5):		At downstream corporate limits.....	*947	Just downstream of R.D. Holt Reservoir Dam.....	*302
Within community.....	#2	Approximately 20 feet upstream of Woods Road.....	*1,019	Syble Creek:	
Shallow flooding (Portage Bayou (Main Ditch)):		Maps available for inspection at Town Hall, 115 W. Main Street, Hancock, New York.		About 2,100 feet downstream of Northside Road.....	*268
Just upstream of Interstate 55.....	#2			Just downstream of Cash Road.....	*274
About 1.6 miles upstream of County Highway M.....	#2	Hancock (village), Delaware County (FEMA docket No. 6978)		Just upstream of Cash Road.....	*282
Maps available for inspection at the County Courthouse, New Madrid, Missouri.		East Branch Delaware River:		About 1,350 feet upstream of U.S. Route 15.....	*289
		At confluence with West Branch Delaware River.....	*904	Lake Butner:	
NEVADA		Approximately 0.57 mile upstream of State Route 97.....	*914	Just upstream of R.D. Holt Reservoir Dam.....	*360
Nye County (unincorporated areas) (FEMA docket No. 6969)		West Branch Delaware River:		Just downstream of Roberts Chapel Road.....	*360
Amagosa River:		At the confluence with East Branch Delaware River.....	*904	Falls Lake: Along shoreline	*263
Approximately 640 feet downstream of U.S. Highway 95, first road crossing downstream of the confluence of Dry Canyon Creek.....	*3,178	Approximately 0.68 mile upstream of State Route 191.....	*914	Cozart Creek:	
At U.S. Highway 95 first crossing downstream of Dry Canyon Creek confluence.....	*3,189	Sands Creek:		About 2.48 miles downstream of Gate No. 2 Road.....	*272
Just downstream of Main Street.....	*3,269	At the confluence with West Branch Delaware River.....	*912	About 900 feet upstream of Gate No. 2 Road.....	*354
Approximately 2,150 feet downstream of U.S. Highway 95.....	*3,272	At the confluence of Bear Brook.....	*839	Fishing Creek:	
West Pahump Valley Wash:		Bear Brook:		At mouth.....	*297
At the intersection of Bell Avenue and Barney Street.....	#1	At the confluence with Sands Creek.....	*939	Just upstream of confluence of Fishing Creek Tributary 1.....	*376
Unnamed Western Wash:		Approximately 40 feet upstream of corporate limits.....	*1,020	At mouth.....	*375
At the intersection of Bell Avenue and Barney Street.....	#1	Maps available for inspection at the Village Hall, 66 East Front Street, Hancock, New York.		About 2,000 feet upstream of mouth.....	*381
At the intersection of Corbin Street and an unnamed road located 2,680 feet south of Charleston Park Avenue.....	#2			Hachens Run:	
Wheeler Wash:		Pittstown (town), Rensselaer County (FEMA docket No. 6968)		At mouth.....	*356
At the mouth of Wheeler Wash Canyon approximately 3 miles up-fan from State Highway 160.....	#5			About 1,400 feet upstream of U.S. Route 15.....	*414
At the intersection of Homestead Road and State Highway 160.....	#1			Maps available for inspection at the County Planning Office, County Administration Building, 141 Williamsboro Street, Oxford, North Carolina.	

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Oxford (city), Granville County (FEMA docket No. 6975)		Lowellville (village), Mahoning County (FEMA docket No. 6978)		At downstream corporate limits	*1,125
<i>Fishing Creek Tributary 1:</i>		<i>Mahoning River:</i>		Approximately 0.44 mile upstream of North Buffalo Street	*1,135
About 2000 feet upstream of mouth	*381	About 3200 feet downstream of First Street	*809	<i>Kizer Creek:</i>	
Just upstream of U.S. Route 15	*438	About 1.2 miles upstream of confluence of Gray's Run	*821	At confluence with Camp Brook Creek	*1,130
<i>Fishing Creek Tributary 1A:</i>		Maps available for inspection at the City Hall, Municipal Building, Lowellville, Ohio.		Approximately 1,050 feet upstream of Hill Street	*1,186
<i>At mouth:</i>				Maps available for inspection at the Borough Building, Etland, Pennsylvania.	
Just downstream of U.S. Route 15	*413			Picture Rocks (borough), Lycoming County (FEMA docket No. 6975)	
Just upstream of U.S. Route 15	*435	OREGON		<i>Muncy Creek:</i>	
<i>Hachens Run:</i>		Gresham (city), Multnomah County (FEMA docket No. 6978)		Approximately 1,950 feet downstream of downstream corporate limits	*632
About 1100 feet upstream of U.S. Route 15	*413	<i>Fairview Creek:</i>		At upstream corporate limits	*681
Just upstream of Lake Devin Road	*491	Approximately 100 feet upstream of NE. Glisan Street	*209	<i>Laurel Run:</i>	
<i>Coon Creek:</i>		Just upstream of Stark Street	*244	At confluence with Muncy Creek	*640
About 500 feet downstream of Orphanage Road	*364	Just upstream of Burnside Road	*254	At upstream corporate limits	*672
About 500 feet upstream of confluence of Jordan Creek	*384	At Birdsall Avenue	*263	Maps available for inspection at the Borough Hall, Picture Rocks, Pennsylvania.	
<i>Jordan Creek:</i>		Approximately 2,500 feet upstream of SE. Division Street	*266	Rockland (township), Venango County (FEMA docket No. 6978)	
At mouth	*384	Maps available for review at the Department of Public Works, Gresham City Hall, 1333 NW. Eastman Parkway, Gresham, Oregon.		<i>Allegheny River:</i>	
Just downstream of Oxford Bypass	*438			At downstream of corporate limits	*892
Just upstream of Oxford Bypass	*442	Lakeview (city), Lake County (FEMA docket No. 6975)		At confluence with East Sandy Creek	*961
Just downstream of SR 1462	*443	<i>North Goose Lake Basin:</i>		Maps available for inspection at the Township Building, Kennerdale, Pennsylvania.	
Just upstream of SR 1462	*449	Approximately 2,500 feet downstream of State Highway 88	*4,732	Sandycreek (township), Venango County (FEMA docket No. 6978)	
Maps available for inspection at the Planning Department, City Hall, Oxford, North Carolina.		Maps available for review at City Hall, City Recorder's Office, 525 North First Street, Lakeview, Oregon.		<i>Allegheny River:</i>	
Person County (unincorporated areas) (FEMA docket No. 6975)				At confluence of Sandy Creek	*950
<i>Marlowes Creek:</i>		PENNSYLVANIA		Approximately 528 feet upstream of U.S. Route 322	*976
At mouth	*368	Beech Creek (township), Clinton County (FEMA docket No. 6975)		Maps available for inspection at the Township Building, Franklin, Pennsylvania.	
About 1100 feet upstream of Depot Street	*618	<i>Beech Creek:</i>		South Creek (township), Bradford County (FEMA docket No. 6975)	
<i>Flat River:</i>		At downstream corporate limits	*608	<i>South Creek:</i>	
About 2000 feet downstream of SR 1737	*432	Approximately 1.7 miles upstream of State Route 364	*691	At downstream corporate limits	*1,084
At confluence of North Flat River	*485	Maps available for inspection at the Beech Creek Township Building, Beech Creek, Pennsylvania.		At a point approximately .7 mile upstream of an abandoned Railroad Crossing	*1,243
<i>North Flat River:</i>				Maps available for inspection at the South Creek Township Building, Gillett, Pennsylvania.	
At mouth	*485	Burlington (borough), Bradford County (FEMA docket No. 6975)		South Phillipsburg (borough), Centre County (FEMA docket No. 6975)	
About 800 feet upstream of SR 1142	*605	<i>Sugar Creek:</i>		<i>Moshannon Creek:</i>	
<i>South Flat River:</i>		At downstream corporate limits	*878	At downstream corporate limits	*1,429
At confluence of North Flat River	*485	At upstream corporate limits	*890	At upstream corporate limits	*1,430
About 1600 feet upstream of SR 1109	*623	Maps available for inspection at the Borough Building, Burlington, Pennsylvania.		Maps available for inspection at the Borough Office, South Phillipsburg, Pennsylvania.	
<i>Hycro Lake: Along shoreline</i>	*414	Burlington (township), Bradford County (FEMA docket No. 6975)		Wells (township), Bradford County (FEMA docket No. 6975)	
<i>Mayo Reservoir: Along shoreline</i>	*445	<i>Sugar Creek:</i>		<i>Seeley Creek:</i>	
Maps available for inspection at the County Manager's Office, Courthouse Square, Roxboro, North Carolina.		At Township Route 552 (Luthers Mills Bridge)	*870	At downstream corporate limits	*1,059
Roxboro (city), Person County (FEMA docket No. 6975)		At upstream corporate limits	*890	At upstream corporate limits	*1,214
<i>Marlowes Creek:</i>		Maps available for inspection at the Township Building, Burlington, Pennsylvania.		<i>Hammond Creek:</i>	
About 1.0 mile downstream of U.S. Route 501	*496			At confluence with Seeley Creek	*1,064
Just downstream of U.S. Route 501	*535	Donegal (township), Westmoreland County (FEMA docket No. 6978)		At upstream corporate limits	*1,150
Just upstream of Norfolk Southern Railway	*546	<i>Fourmile Run:</i>		Maps available for inspection at the Township Building, Gillett, Pennsylvania.	
Just downstream of Burch Avenue	*598	Downstream at State Route 130	*1,390	West Burlington (township), Bradford County (FEMA docket No. 6975)	
Just upstream of Burch Avenue	*606	At Fourmile Run Dam	*1,445	<i>Sugar Creek:</i>	
About 1100 feet upstream of Depot Street	*618	<i>Indian Creek:</i>		At downstream corporate limits	*890
Maps available for inspection at the City Hall, Roxboro, North Carolina.		At downstream corporate limits	*1,483	At upstream corporate limits	*945
Stem (town), Granville County (FEMA docket No. 6975)		At State Route 31	*1,535	Maps available for inspection at the Township Building, West Burlington, Pennsylvania.	
<i>Ledge Creek:</i>		Maps available for inspection at the Township Building, Donegal, Pennsylvania.		UTAH	
About 1100 feet upstream of Old Route 75	*409			Morgan County (unincorporated areas) (FEMA docket No. 6978)	
About 2600 feet upstream of Old Route 75	*422	Elkland (borough), Tioga County (FEMA docket No. 6975)		<i>Weber River:</i>	
Maps available for inspection at the County Planning Office, County Administration Building, 141 Williamsboro Street, Oxford, North Carolina.		<i>Cowanesque River:</i>		650 feet upstream of confluence with Cottonwood Creek	*4,836
OHIO		Approximately 0.58 mile downstream of State Route 49	*1,125		
Carroll County (unincorporated areas) (FEMA docket No. 6978)		Approximately 750 feet upstream of upstream corporate limits	*1,148		
<i>Big Sandy Creek:</i>		<i>Camp Brook Creek:</i>			
At Western County Boundary	*969				
About 2000 feet upstream of confluence of Still Fork	*1037				
Maps available for inspection at the Commissioner's Office, County Courthouse, Public Square, Carrollton, Ohio.					

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
225 feet upstream of bridge at County Road 591	*4,889	Approximately 1,400 feet downstream of Gold Creek Road	*1,537	Maps available for inspection at the Zoning Office, County Courthouse, 800 Clermont Street, Antigo, Wisconsin.	
100 feet downstream of corporate city limits—Morgan City	*5,032	Approximately 490 feet downstream of the confluence of Mill Creek	*1,541		
1,150 feet downstream of Fairground Bridge	*5,067	Approximately 520 feet upstream of Faye Road	*1,547	Osseo (city), Trempealeau County (FEMA docket No. 6975)	
At Fairground Bridge	*5,080	Approximately 250 feet upstream of Burlington Northern Railroad	*1,551	Buffalo River:	
13,840 feet upstream of Fairground Bridge	*5,124	Approximately 1,300 feet upstream of Mantz Rickey Road	*1,554	About 0.86 mile downstream of U.S. Highway 10	*943
East Canyon Creek:		Colville River Near Chewelah:		About 1100 feet upstream of Main Street	*956
At confluence with Weber River	*4,999	Approximately 200 feet upstream of Steinmetz Road	*1,631	South Fork Buffalo River:	
Just downstream of Young Street Bridge	*5,056	Approximately 750 feet downstream of Schmiedelkoffer Road	*1,634	At mouth	*949
4,980 feet upstream of corporate city limits at limit of detailed study	*5,077	Approximately 900 feet downstream of Alm Lane Road	*1,637	Just upstream of Harmony Street Dam	*957
Deep Creek:		Approximately 300 feet upstream of the confluence of Chewelah Creek	*1,640	About 1.14 miles upstream of Harmony Street Dam	*961
At confluence with Weber River	*4,991	Approximately 20 feet downstream of the Burlington Northern Railroad	*1,641	Unnamed Tributary:	
100 feet upstream of County Road 591	*5,046			Just upstream of 5th Street	*951
600 feet upstream of confluence with North Fork at limit of detailed study	*5,140	Maps are available for review at City Hall, 170 South Oak, Colville, Washington.		About 1600 feet upstream of 5th Street	*959
Cottonwood Creek:				Maps available for inspection at the City Hall, 110 West 8th Street, Osseo, Wisconsin.	
450 feet upstream of confluence with Weber River	*4,834				
Just downstream of County Road 337	*4,872			Sawyer County (unincorporated areas) (FEMA docket No. 6976)	
13,720 feet upstream of County Road 337 at limit of detailed study	*5,110			Chippewa River:	
Maps are available for review at the Morgan County Economic Development Office, 98 North Commercial Street, Morgan, Utah.		Wahkiakum County (unincorporated areas) (FEMA docket No. 6976)		About 2.76 miles downstream of Arpin Dam	*1189
		Columbia River:		Just downstream of Arpin Dam	*1207
		At the Wahkiakum County corporate limits at River Mile 20	*10	Just upstream of Arpin Dam	*1229
		At the most downstream point of Puget Island	*11	Just downstream of Moose Lake Dam	*1361
		At River Mile 48	*12	Maps available for inspection at the Zoning Administration Office, County Courthouse, 406 Main Street, Hayward, Wisconsin.	
		At the Wahkiakum County corporate limits at River Mile 52	*13		
		Elochoman River:			
		Approximately 1,000 feet upstream of confluence with Elochoman Slough	*11		
		Just upstream of State Route 4 bridge	*11		
		Approximately 1,600 feet upstream of Foster Road bridge	*14		
		Approximately 2,300 feet downstream of State Route 407 bridge	*25		
		Approximately 1,700 feet upstream of State Route 407 bridge	*35		
		Maps are available for review at the Wahkiakum County Courthouse, 64 Main Street, Cathlamet, Washington.			
		Whatcom County (unincorporated areas) (FEMA docket No. 6976)			
		Strait of Georgia:			
		At shoreline about 3,000 feet east of the west end of Point Roberts	*11		
		Seaward edge of Edwards Drive, 3,000 feet east of the west end of Point Roberts	*8		
		Birch Bay:			
		Just south of a point along Birch Point Road, 600 feet west of its intersection with Shintaffer Road	*9		
		At shoreline south of the intersection of Nitinat Road and Halda Way	*14		
		Maps are available for review at County Engineer's Office, 311 Grand Avenue, Bellingham, Washington.			
		WISCONSIN			
		Cornell (city), Chippewa County (FEMA docket No. 6978)			
		Chippewa River:			
		About 1.5 miles downstream of Cornell Dam	*974		
		Just downstream of Cornell Dam	*981		
		Just upstream of Cornell Dam	*1,005		
		About 1.3 miles upstream of Bridge Street	*1,006		
		Maps available for inspection at the City Hall, 222 Main Street, Cornell, Wisconsin.			
		Langlade County (unincorporated areas) (FEMA docket No. 6978)			
		Spring Brook:			
		Just upstream of Monarch Road	*1,461		
		Just downstream of State Highway 64	*1,500		
		Just upstream of State Highway 64	*1,508		
		Just downstream of County Highway V	*1,524		
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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 500 feet south of Second Street south and approximately 200 feet east of Pulsipher Wash.....	#1
Maps are available for review at City Hall, 11 East Mesquite Boulevard, Mesquite, Nevada.	
PENNSYLVANIA	
Oley (township), Berks County (FEMA Docket No. 6966)	
Manatwiny Creek:	
Approximately 0.3 mile downstream of down- stream corporate limits.....	*288
Approximately 290 feet upstream of L.R. 664 (Bertollet Mill Road).....	*351
Little Manatwiny Creek:	
At confluence with Manatwiny Creek.....	*319
Approximately 750 feet upstream of second- upstream crossing of State Route 73.....	*486
Furnace Creek:	
At confluence with Little Manatwiny Creek.....	*337
Approximately 170 feet upstream of Township Route 606 (Furnace Road).....	*558
Monocacy Creek:	
At the downstream corporate limits, Limekiln Road (L.R. 06027).....	*274
Approximately 750 feet upstream of Township Route 539 (West School Road).....	*342
Oysterville Creek:	
At confluence with Manatwiny Creek.....	*310
Approximately 0.8 mile upstream of Township Route 595.....	*351
Biabar Creek:	
At the confluence with Manatwiny Creek.....	*336
Approximately 150 feet upstream of upstream corporate limits.....	*407
Unnamed Tributary to Oysterville Creek:	
At confluence with Oysterville Creek.....	*318
At the upstream corporate limits.....	*327
Unnamed Tributary to Little Manatwiny Creek:	
At confluence with Little Manatwiny Creek.....	*475
At upstream corporate limits.....	*484
Maps available for inspection at the Municipal Building, Rose Virginia Avenue, Oley, Pennsylv- ania.	
TEXAS	
San Marcos (city), Hays and Caldwell Counties (FEMA Docket No. 6946)	
San Marcos River:	
1.4 miles downstream of downstream corporate limits.....	*574
At confluence of Sink Creek at Spring Lake.....	*579
Sink Creek:	
At confluence with San Marcos River at Spring Lake.....	*579
Approximately 830 feet upstream of corporate limits.....	*587
Purgatory Creek:	
At confluence with San Marcos River.....	*574
At upstream corporate limits.....	*607
Willow Springs Creek:	
At confluence with San Marcos River.....	*574
Approximately 170 feet upstream of corporate limits.....	*638
Stream CC-1:	
At downstream corporate limits.....	*606
Approximately 1,500 feet upstream of Interstate Route 35.....	*640
Blanco River:	
At downstream corporate limits.....	*584
Approximately 1,340 feet upstream of Interstate Route 35.....	*612
Bypass Creek:	
At downstream corporate limits.....	*574
Approximately 0.8 mile upstream of corporata limits.....	*600
Bypass Creek Tributary 1: For entire length within the community.....	*579
Bypass Creek Tributary 2:	
At confluence with Bypass Creek.....	*579
At upstream corporate limits.....	*590
Purgatory Creek Diversion 1:	
At confluence with Purgatory Creek.....	*584
At divergence from Purgatory Creek.....	*605

Source of flooding and location:

Maps available for inspection at the City Hall,
630 East Hopkins, San Marcos, Texas.

Issued: June 6, 1990.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 90-13819 Filed 6-15-90; 8:45 am]

BILLING CODE 6718-03-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1502, 1503, 1506,
1509, 1510, 1514, 1515, 1516, 1517,
1519, 1522, 1530, 1531, 1532, 1533,
1536, and 1545

[FRL-3788-5]

Acquisition Regulation

AGENCY: Environmental Protection
Agency.

ACTION: Final rule.

SUMMARY: This rule makes numerous
administrative changes to the
Environmental Protection Agency (EPA)
Acquisition Regulation (EPAAR). These
changes modify existing review and
approval levels for various contract
actions; establish new review and
approval levels not currently contained
in the EPAAR; and modify the dollar
threshold for internal review of contract
actions. These changes will expedite the
processing of contract actions while still
ensuring proper administrative review.

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT:
Julie Taitt, Environmental Protection
Agency, Procurement and Contracts
Management Division (PM-214F), 401 M
Street SW., Washington, DC 20460,
Telephone: (202) 245-3944.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation
(FAR) requires Federal agencies to
publish review and approval levels for
various contract actions as part of the
agency's regulations supplementing the
FAR. At EPA, these review and
approval levels are contained in the
EPA Acquisition Regulation (EPAAR).
The EPA Procurement and Contracts
Management Division (PCMD) has
added two Associate Director positions
reporting directly to the Head of the
Contracting Activity (HCA). These

revisions to the EPAAR define the
position of Responsible Associate
Director (RAD) and modify review and
approval levels in the EPAAR, primarily
to delegate authority from the HCA to
the RAD. Additionally, these revisions
establish new review and approval
levels not currently contained in the
EPAAR and modify the dollar
thresholds for internal review of
contract actions. These changes will
expedite the processing of contract
actions while still ensuring proper
administrative review.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated
December 14, 1984, establishes the
requirements for Office of Management
and Budget (OMB) review of agency
procurement regulations. This regulation
does not fall within any of the categories
cited in the bulletin requiring OMB
review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
not apply because this rule does not
contain information collection
requirements that require the approval
of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies that this rule does
not exert a significant economic impact
on a substantial number of small
entities. The rule merely revises EPA's
internal review and approval
procedures. The rule has no substantive
impact on the EPA Source Selection
Procedures in 48 CFR subpart 1515.6.

E. Public Comments

The EPA has not solicited public
comments on this final rule since it does
not have a significant cost or
administrative impact on contractors or
offerors.

**List of Subjects in 48 CFR Parts 1501,
1502, 1503, 1506, 1509, 1510, 1514, 1515,
1516, 1517, 1519, 1522, 1530, 1531, 1532,
1533, 1536, and 1545**

Government procurement.

For the reasons set out in the
preamble, chapter 15 of Title 48 Code of
Federal Regulations, is amended as
follows:

1. The authority citation for 48 CFR
parts 1501, 1502, 1503, 1506, 1509, 1510,
1514, 1515, 1516, 1517, 1519, 1522, 1530,
1531, 1532, 1533, 1536, and 1545
continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as
amended, 48 U.S.C. 486(c).

1501.670, 1503.301, 1503.408-1, 1503.409, 1503.502, 1506.202, 1510.007, 1515.804-3, 1515.902, 1516.404-276, 1516.404-277, 1517.202, 1522.608-4, 1522.803, 1522.1306, 1522.1403, 1530.304, 1532.102, 1533.209, 1536.209, and 1545.403 [Amended]

2. In the list below, for each citation listed in the left column, remove the wording indicated in the middle column from wherever it appears in the citation and replace it with the wording indicated in the right column:

Citation	Remove	Replace with
1501.670-6(c) 1503.301	HCA..... Head of the Contracting Activity.	RAD. Responsible Associate Director (RAD).
1503.408-1	Head of the Contracting Activity.	RAD.
1503.409	Head of the Contracting Activity.	RAD.
1503.502	Head of the Contracting Activity.	RAD.
1506.202	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1510.007	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1515.804-3	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1515.902(c)	Head of the Contracting Activity (HCA).	RAD.
1516.404-276(a)	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1516.404-277 1517.202	HCA..... Head of the Contracting Activity (HCA).	RAD. Responsible Associate Director (RAD).
1522.608-4	HCA.....	Responsible Associate Director (RAD).
1522.803	Head of the Contracting Activity (HCA).	RAD.
1522.1306	Head of the Contracting Activity.	RAD.
1522.1403	Head of the Contracting Activity (HCA).	RAD.
1530.304	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1532.102	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1533.209	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).

Citation	Remove	Replace with
1536.209	Head of the Contracting Activity (HCA).	Responsible Associate Director (RAD).
1545.403	Head of the Contracting Activity.	Responsible Associate Director (RAD).

PART 1502—[AMENDED]

3. Subpart 1502.1 is amended in section 1502.100 by revising the definition for "Procurement Executive" and by adding a definition to read as follows:

1502.100 Definitions.

Procurement Executive means the Director, Procurement and Contracts Management Division.

"Responsible Associate Director" (RAD) means the individual within the Procurement and Contracts Management Division with the title of Associate Director, delegated responsibility for the contract action, and reporting directly to the Director, Procurement and Contracts Management Division.

PART 1514—[AMENDED]

4. Subpart 1514.2 is amended by adding section 1514.201-7 to read as follows:

1514.201-7 Contract clauses.

The Responsible Associate Director (RAD) is authorized to waive the inclusion of the clauses at FAR 52.214-27 and 52.214-28, in accordance with FAR 14.201-7.

5. Section 1514.404-1 is revised to read as follows:

1514.404-1 Cancellation of invitations after opening.

The RAD is authorized to make the determination in FAR 14.404-1(c), after consultation with legal counsel.

PART 1515—[AMENDED]

6. In section 1515.604, the second and third sentences in paragraph (a) are revised to read as follows:

1515.604 Responsibilities and duties.

(a) * * * Duties of the SSO include appointing the members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel, and the Business Evaluation Panel, and approving the solicitation document. However, the Chief of the Contracting Office (CCO) is

responsible for approving amendments to solicitation documents.

7. Section 1515.609 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

1515.609 Competitive range.

(a) The Contracting Officer shall prepare the determination of the competitive range for the subsequent concurrence of the SSO. * * *

(b) When the procurement action is expected to exceed \$5,000,000 (\$25,000,000 for Superfund), the SSO may call for an oral briefing by the Contracting Officer prior to concurrence on the competitive range decision.

8. Section 1515.612 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(2) introductory text to read as follows:

1515.612 Formal source selection.

(a) * * * (1) *Acquisitions having a potential value exceeding \$5,000,000 (\$25,000,000 for Superfund):*

(i) SSO—RAD
(ii) SEB Chairperson—Chief of the Contracting Office (CCO) or, in his/her absence, the Acting CCO.

(iii) SEB membership—TEP chairperson, BEP chairperson, program office representative not otherwise involved in the evaluation process, and other specialists appointed by the SSO.

(2) *Acquisition having a potential value of \$5,000,000 or less (\$25,000,000 or less for Superfund):*

1519.201-2 [Amended]

9. In section 1519.201-2, paragraph (c)(3) is amended by removing "over \$10,000" and inserting "in excess of the small purchase limitation."

10. Section 1515.1003 is amended by revising the first sentence to read as follows:

1515.1003 Debriefing of unsuccessful offerors.

The CCO, or his/her designee, shall conduct debriefings of unsuccessful offerors, with participation of the Project Officer and such other specialists as the CCO or designee deems necessary.

PART 1516—[AMENDED]

11. Part 1516 is amended by adding Subpart 1516.6 to read as follows:

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts**1516.603 Letter Contracts.****1516.603-3 Limitations.**

The RAD is authorized to make the determination in FAR 16.603-3.

PART 1531—[AMENDED]

12. Section 1531.101 is revised to read as follows:

1531.101 Objectives.

Requests for individual and class deviations shall be submitted through the Procurement Policy Staff to the Responsible Associate Director (RAD). The RAD approves requests for individual deviations. The RAD reviews and forwards requests for class deviations to the Head of the

Contracting Activity (HCA). The HCA coordinates approval of requests for class deviations and Agency supplements with the Chairperson of the Civilian Agency Acquisition Council.

PART 1536—[AMENDED]

13. Section 1536.602-4 is revised to read as follows:

1536.602-4 Selection authority.

For acquisitions with a potential value exceeding \$500,000, the RAD shall serve as the EPA selection authority. For acquisitions with a potential value of \$500,000 or less, the Chief of the Contracting Office shall determine the selection authority.

PART 1542—[AMENDED]

14. In section 1542.1202, the last

sentence in paragraph (b) is revised to read as follows:

1542.1202 Responsibility for executing agreements.

• • • • •

(b) • • •

The Chief of the Procurement Policy Staff, PCMD, will, in each case, designate the Contracting Office responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name agreement.

Dated: June 5, 1990.

John C. Chamberlin,
Director, Office of Administration.
[FR Doc. 90-14035 Filed 6-15-90; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. 90-9]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking; extension of time for submission of comments.

SUMMARY: This document extends until July 8, 1990, the Office of the Comptroller of the Currency (OCC) deadline for submission of comments on the proposal to amend its regulations governing the exercise of fiduciary powers by national banks.

DATES: Comments must be submitted on or before July 8, 1990.

ADDRESSES: Comments should be directed to Docket No. 90-3, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attention: Jacqueline England. Comments will be available for inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Dean E. Miller, Senior Advisor for Fiduciary Responsibility, (202) 447-1731; Donald N. Lamson, Assistant Director, Securities and Corporate Practices Division, (202) 447-1954; or William Glidden, Assistant Director, Legal Advisory Services Division, (202) 447-1881; Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published in the Federal Register on February 7, 1990 (55 FR 4184), and comments were to be received on or before May 8, 1990. The new deadline for submission of comments is July 8, 1990. This extension will allow agencies

and relevant parties increased time to fully assess the proposal.

OCC has extended the comment period by 60 days. Any interested person may file comments during this period.

Dated: June 12, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-13998 Filed 6-15-90; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ANM-2]

Establishment of Transition Area, Tooele, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Tooele, Utah, Transition Area to provide controlled airspace for aircraft executing a new instrument approach procedure to the Bolinder Field-Tooele Valley Airport. The airspace would be depicted on aeronautical charts for pilot reference. This proposed controlled airspace is intended to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules.

DATES: Comments must be received on or before July 31, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 90-ANM-2, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-21, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

SUPPLEMENTARY INFORMATION: Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ANM-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the Docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide controlled airspace for aircraft

executing a new non-directional radio beacon (NDB) instrument approach procedure to the Bolinder Field-Tooele Valley Airport, Tooele, Utah, utilizing the Tooele NDB as a navigational aid. The intended effect is to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Tooele Utah Transition Area [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Bolinder Field-Tooele Valley Airport (Latitude 40°36'40"N., Longitude 112°21'00"W.); excluding the portion within the Salt Lake City, UT, Transition Area.

Issued in Seattle, Washington, on June 4, 1990.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division, Northwest
Mountain Region.

[FR Doc. 90-14003 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Proposed Customs Regulations Amendments Regarding Enforcement of the Automotive Products Trade Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations with regard to control procedures for enforcing the provisions of the Automotive Products Trade Act of 1965 (APTA). Under the APTA, articles of motor-vehicle equipment which are products of Canada, may enter the U.S. conditionally free of duty, with limited exceptions, so long as they are intended for use as original motor-vehicle equipment in the manufacture of motor vehicles in the U.S. and are so used. It has become apparent that the regulations which implement the APTA could more clearly state when such articles are considered as having been diverted from their intended use and the duties and liabilities of responsible parties where articles properly imported under the law are so diverted. The proposals set forth in this document seek to do this as well as to make certain non-substantive technical amendments to clarify and simplify the existing regulations. The adoption of the U.S.-Canada Free Trade Agreement (CFTA) which was implemented by interim regulations effective January 1, 1989, does not affect the need for these amendments because diversions under the APTA will remain a concern during the phase-in period of the CFTA.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Legal Matters: James Seal, General Classification Branch, (202)-566-8181;

Operational and CFTA Matters: Maria Reba, Office of Trade Operations, (202)-566-7060;

Audit Matters: Eugene Sheskin, Office of Regulatory Audit (202)-566-2812.

SUPPLEMENTARY INFORMATION:

Background

The Automotive Products Trade Act of 1965 (APTA), Public Law 89-283 (1965), provides for the duty-free entry into the U.S. of certain automotive products of Canadian origin. In order to be admitted free of duty, the products must be "Canadian article(s)" as defined in the APTA, and must be certified for use as "original motor-vehicle equipment," slated for installation in U.S.-manufactured motor vehicles during the assembly of those motor vehicles. The tariff classification of these articles is governed by General Note 3(c)(iii) of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), which was effective January 1, 1989. The General Note contains the provisions regarding "Automotive Products and Motor Vehicles Eligible for Special Tariff Treatment" as implemented by Section 1204 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), enacted on August 23, 1988, which adopted the HTSUS. These provisions were previously contained in Schedule 6, part 6, subpart B, Headnote 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which was superseded by the HTSUS.

Section 10.84, Customs Regulations (19 CFR 10.84), as amended by T.D. 89-3 published in the *Federal Register* of December 23, 1988 (53 FR 51762), which implemented the United States-Canada Free Trade Agreement (CFTA), sets forth the provisions under which Customs administers the APTA. These regulations provide, in relevant part, that when a decision is made to divert properly imported automotive articles from their intended use, Customs must be notified of that decision.

Arrangements must then be made to destroy or export the products under Customs supervision, or to pay the duties that would have been assessed if the products were not imported under the provisions of APTA. If these conditions are not met, the products, or their value, are subject to forfeiture.

Customs has identified several problem areas relating to the diversion of APTA articles which are being clarified in the proposed amendments. For example:

1. When an importer who is not a motor vehicle manufacturer or Original Equipment Manufacturer (OEM), sells

APTA articles to an OEM without informing the OEM that the articles are covered by APTA and must be used in the manufacture of a motor vehicle, a problem arises. The OEM, purchasing and receiving the articles from an apparent domestic source, may be unaware of the APTA status of the articles. The OEM may use the articles other than in the manufacture of a motor vehicle and thus divert the parts from their approved use on which the duty free admission was based. This situation may arise when articles destined for installation on new vehicles and received from a non-OEM or a domestic processor are not installed during the manufacturing process but subsequent thereto, e.g., automobile dealer installed options. When this happens, the revenue is not adequately protected because it is unclear that a diversion has taken place, and it is also unclear who must file the diversion report and pay the duty in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor vehicle equipment (diversion duties).

2. There is no time limit specified in which diversion reports must be filed. As a result, diversions may go unreported and diversion duties unpaid.

3. There is no provision for the centralized filing of diversion reports. This makes it difficult for Customs to track APTA equipment once lawfully imported, thus hampering efforts to detect diversions.

4. Audits of diversion reports have shown that some report filers have not reported all inventory gains and losses during a reporting period. These audits have revealed that inventory losses of one part have been offset with inventory gains of another part. The audits have also shown offsets of losses in one reporting period with gains in another reporting period.

Proposals

In order to correct the noted deficiencies, it is proposed to amend § 10.84, Customs Regulations (19 CFR 10.84), as previously amended by T.D. 89-3, published in the *Federal Register* of December 23, 1988 (53 FR 51762), to provide the following:

1. An importer who sells/transfers APTA equipment to a related or non-related party must notify the purchaser/transferee as to the nature of such equipment and that it must be destroyed or exported under Customs supervision or the appropriate duties paid, if the equipment is used for other than original motor vehicle equipment in the manufacture of motor vehicles since the equipment is considered to have been

diverted from the use which was the basis of its duty free admission.

2. Importers of APTA articles must file a diversion report, positive or negative, in a format approved by the District Director, Detroit, Michigan, within a maximum period of 30 days following the end of their normal accounting period, e.g., month/quarter/fiscal year, model year, etc. and pay the appropriate duties which may be due on the articles diverted during that period. Although the filing of a diversion report may be done on a monthly, quarterly or annual basis, depending on factors such as the importer's rate of diversion, volume of imports, inventory system and accounting methods, reports will be required no less than once a year. Reports covering diversions made prior to the effective date of these regulations and not previously reported to Customs will be due, without regard to the accounting period, within 60 days from the effective date of these regulations. If a report is not filed within the prescribed time period and a dutiable diversion is found to have taken place, the articles will be subject to forfeiture or their value recoverable from the importer/diverter.

3. The District Director of Customs, Detroit, Michigan, is designated to receive filings of all APTA related documents, including diversion reports, regardless of the port of entry. The specifics of such reports are noted in the regulations.

4. Liquidated damages may be assessed against the importer of record under an entry bond or general term bond under which APTA equipment was entered if the APTA regulations are not followed. Customs would have the option to assess liquidated damages under the bond, or pursue, under the terms of the statute, seizure and forfeiture of the equipment or its value.

Numerous non-substantive technical changes are also being made to clarify and simplify the wording of the existing language in § 10.84, Customs Regulations (19 CFR 10.84).

The adoption of the U.S.-Canada Free Trade Agreement (CFTA) does not affect the need for these amendments because diversion under the APTA will remain a concern during the phase-in of the CFTA.

Comments

Before adopting the proposed regulations, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department

Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515-), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this proposed regulation is in § 10.84, title 19, Code of Federal Regulations (19 CFR 10.84). This information will be used to determine the dutiability of original motor-vehicle equipment manufactured in Canada which is imported conditionally free of duty and subsequently diverted from the originally intended use which supported the conditionally free admission. The likely respondents and/or recordkeepers are business and other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 27,510 hours.

The estimated annual burden per respondent/recordkeeper varies from 60 hours to 1 hour, depending on individual circumstances, with an estimated average of 20 hours.

Estimated number of respondents and/or recordkeepers: 210.

Estimated annual frequency of responses: 52.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Motor vehicles, Reporting and recordkeeping requirements.

Proposed Amendment

It is proposed to amend part 10, Customs Regulations (19 CFR part 10) as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

2. It is proposed to revise section 10.84 to read as follows:

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act 1965 (APTA). The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated as "Free (B)" in the "Special" subcolumn of the HTSUS and must qualify as "Canadian articles" as defined in General Note 3(c)(iii)(A)(1). To claim the exemption from duty under APTA, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a "Canadian article" for purposes of General Note 3(c)(iii)(A)(1). The Customs officer may accept as satisfactory evidence a certificate executed by the exporter as set forth in paragraph (b) of this section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that, under the circumstances of the importation, a certification is unnecessary.

(2) Under the United States-Canada Free Trade Agreement (CFTA) and implementing legislation (Pub. L. 100-449, 100 Stat. 418) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference.

Requirements for averaging are set forth in §§ 10.310 and 10.311 of this part.

(b)(1) When all materials used at any stage in the production of the imported articles are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a "Canadian article":

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Canadian article":

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials on which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If the appropriate Customs officer at the port of entry is satisfied that the revenue will be protected, he may accept, in lieu of the certificate specified in paragraph (b)(2) of this section, a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada

or the United States, or both, materials of a third country.

It is impracticable to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials, but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows:

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a "Canadian article" within the meaning of General Note 3(c)(iii)(A)(1), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b)(1), (b)(2), or (b)(3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of material.

(6) A certificate conforming to paragraph (b)(1), (b)(2), or (b)(3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains;

(ii) The certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada; and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b)(1), (b)(2), or (b)(3) of this section, a manufacturer of motor vehicles who claims a preference under CFTA and elects to average pursuant to § 10.310(a) of this part, shall be subject to the requirements of §§ 10.301 to 10.311 of this part.

(d) When an importer makes an entry or withdrawal from warehouse for consumption of articles for use as "original motor-vehicle equipment" as

that term is defined in General Note 3(c)(iii)(A)(2), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds or motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the district director of Customs is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by Customs officials upon request during a period of three years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, the importer sells or transfers that article, whether to a related party such as in the case of interplant transfers or a non-related party, the importer of record and each subsequent party (responsible party), including agents or subcontractors thereof, selling or transferring that article must inform the transferee in writing that the article has been imported subject to the conditions of the APTA, and that any diversion is to be reported to Customs.

(f) If, following lawful importation under the APTA, the article is diverted from its intended use as original motor-vehicle equipment to be installed in a new motor vehicle during the manufacturing process, by transfer to a non-bona fide motor-vehicle manufacturer, by incorporation in a non-APTA eligible vehicle, or otherwise, the importer of record or the diverter (responsible party) shall report such diversion to Customs in writing. Either the importer of record, or the diverter with written concurrence of the importer of record, may make arrangements to destroy or export the article under Customs supervision, or to pay duty in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor-vehicle equipment (diversion duties). See General Note 3(c)(iii)(B)(2), HTSUS.

(g)(1) Periodic diversion reports, along with the documentary evidence which satisfactorily accounts to the district director for any discrepancies from the quantities of auto parts originally entered duty free under the provisions of APTA, shall be filed with the District

Director of Customs, Detroit, Michigan, in a format approved by that district director, regardless of the port of entry. The reports shall be filed no later than 30 days from the end of the reporter's normal accounting period, e.g., month/quarter/fiscal year or model year, and shall cover inventory gains and losses during such reporting period. The frequency of such report will be based on such factors as an importer's rate of diversion, volume of import, inventory systems and accounting methods, with a minimum of one report a year (positive or negative). If no diversion took place during the reporting period, i.e., 100 percent of the imported parts were used in original equipment manufacturer production, the importer or other responsible party must file a negative report within the prescribed time limit.

(2) The reporter shall pay the appropriate duties which may be due on articles diverted during that period.

(3) The report shall cover parts:

(i) Transferred to service use/after market Original Equipment Manufacturer shipment;

(ii) Scrapped whether documented or undocumented as occurring under Customs supervision;

(iii) Exported whether or not under Customs supervision;

(iv) Previously reported and duty paid; and inventory discrepancies (gains or losses).

(4) The report should be presented using a full inventory accounting procedure. The report must also include part numbers, name of the Canadian suppliers, time period covered, piece price, and tariff nomenclature description and duty rate. It should show, on a per part, component basis, the beginning inventory, purchases for the period, the ending inventory and the percentage that is Canadian sourced. The differences between such beginning inventory, with subsequent purchases, and the ending inventory (the quantity available for use during the reporting period) must further delineate the quantities for:

(i) Original Equipment Market (OEM) sales/transfers;

(ii) Service/after market use;

(iii) Exports;

(iv) Scrap, production and other, whether documented or not;

(v) Inventory discrepancies (actual gains or losses as they occur without any netting of quantities between parts bearing different part numbers or parts bearing the same part number whether in the same or different reporting periods; and

(vi) Other discrepancies.

(5) The documentary evidence supporting explanations of inventory discrepancies, whether or not reportable in a diversion report, shall be retained by the responsible party in accordance with the provisions of part 162 of this chapter.

(h) If a report, when required, is not filed or if any diverted article is not destroyed or exported under Customs supervision or duties paid, Customs may assess a claim for liquidated damages under the importer's bond pursuant to § 113.62 and part 172 of this chapter, or seek forfeiture of the article or its monetary value.

(i) If a report is not filed within the prescribed time period and a dutiable diversion is found to have taken place, the motor vehicles and/or articles will be subject to forfeiture or their value will be recoverable from the importer/diverter.

(j) Duties tendered pursuant to the APTA constitute ordinary Customs duties.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 12, 1990.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90-13973 Filed 6-15-90; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3788-9]

Approval and Promulgation of Implementation Plans; Public Hearing on Federal Highway Funding Restrictions; State of Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of public hearing.

SUMMARY: USEPA is giving notice of the time and location of the public hearing announced in the notice of proposed rulemaking published November 2, 1989 (54 FR 46271). The November 2, 1989, notice proposed the imposition of Federal highway funding restrictions in Cook, DuPage, Kane, and Lake Counties, Illinois, because the State has failed to adopt and submit to USEPA a vehicle inspection and maintenance (I/M) program commensurate with the severity of the ozone problem in the Chicago area. USEPA believes that enhancement of the existing I/M program is a critical component of the "reasonable efforts" Illinois must make

to avoid imposition of the Federal highway funding restrictions pursuant to section 176(a) of the Clean Air Act. State legislation for an enhanced I/M program is being considered by the Illinois General Assembly. If the State adopts an acceptable I/M program prior to the date of the public hearing, USEPA will cancel the public hearing.

DATES: The public hearing will be held on July 18, 1990, at 10:30 a.m.

ADDRESSES: The hearing will be held in Federal Courtroom 2525, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION PLEASE

CONTACT: Jay Bortzer, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-1430.

Date: June 4, 1990.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 90-14165 Filed 6-15-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6991]

Proposed Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARKANSAS	
Jefferson County (unincorporated areas)	
Arkansas River:	
Approximately 0.25 river mile downstream of confluence of Big Bayou Mito	*181
Downstream side of Lock and Dam No. 4	*205
Approximately 7.9 river miles upstream of Lock and Dam No. 5	*231
Caney Bayou:	
At confluence with Lake Langhofer (Arkansas River)	*210
Approximately 0.58 river mile upstream of State Route 104	*274
Hansie Creek:	
At confluence with Caney Bayou	*216
Approximately 80 feet upstream of May Avenue	*264
Gambie Creek:	
At confluence with Caney Bayou	*241
Approximately 70 feet upstream of Stokes Road	*320
Arnold Creek:	
At confluence with Caney Bayou	*251
Approximately 80 feet upstream of German Springs Road	*321
Arnold Creek Tributary:	
At confluence with Arnold Creek	*280
Approximately 0.9 river mile upstream of confluence with Arnold Creek	*302
Bayou Bartholomew:	
At confluence of Outlet Canal	*204
At confluence of Bayou Bartholomew Tributary No. 2	*296
Boggy Bayou:	
At confluence with Sandy Bayou	*203
Approximately 0.45 river mile upstream of Brinkley Road	*247
Boggy Bayou Tributary No. 1:	
At confluence with Boggy Bayou	*204
Approximately 475 feet upstream of Middle Warren Road	*227
Boggy Bayou Tributary No. 2:	
At confluence with Boggy Bayou	*213
Approximately 230 feet upstream of the upstream crossing of Divoky Road	*264
Outlet Canal:	
At confluence with Bayou Bartholomew	*204
At upstream corporate limits	*208
Dancing Rabbit Creek:	
At confluence with Bayou Bartholomew	*207
Approximately 0.17 river mile upstream of Ridgeway Road	*211
Spring Hill Creek:	
Approximately 160 feet upstream of the confluence with Bayou Bartholomew	*209
Approximately 125 feet upstream of Brinkley Road	*254
Nevins Creek:	
At confluence with Bayou Bartholomew	*211
Approximately 0.21 river mile upstream of Shannon Petty Road	*289
Piney Creek:	
At confluence with Nevins Creek	*221
Approximately 0.14 river mile upstream of U.S. Route 79 Bypass (Sulphur Springs Road)	*303
Nevins Tributary:	
At confluence with Nevins Creek	*231
Approximately 0.44 river mile upstream of Ramick Road	*273
Sulphur Springs Creek:	
At confluence with Nevins Creek	*246
Approximately 0.42 river mile upstream of Lowman Road	*273
Sulphur Springs Tributary:	
At confluence with Sulphur Springs Creek	*266
Approximately 0.21 river mile upstream of Sulphur Springs Road	*279
Industrial Creek:	
At confluence with Bayou Bartholomew	*225

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 0.28 river mile upstream of Claude Road	*278
<i>Industrial Creek Tributary:</i>	
At confluence with Industrial Creek	*266
Approximately 0.18 river mile upstream of Double "LL" Road	*285
<i>Bayou Bartholomew Tributary No. 1:</i>	
At confluence with Bayou Bartholomew	*269
Approximately 0.44 river mile upstream of Garman Road	*329
<i>Bayou Bartholomew Tributary No. 2:</i>	
At confluence with Bayou Bartholomew	*296
Approximately 60 feet upstream of County Route	*315
<i>Wabbasaka Bayou:</i>	
Approximately 1,580 feet downstream of Pawpaw Street	*197
Approximately 600 feet upstream of U.S. Route 79	*200
<i>Caney Tributary No. 1:</i>	
Approximately 0.19 river mile upstream of confluence with Caney Bayou	*227
Approximately 1 river mile upstream of confluence with Caney Bayou	*229
<i>Caney Tributary No. 2:</i>	
At confluence with Caney Bayou	*235
Approximately 0.52 river mile upstream of confluence with Caney Bayou	*247
<i>Caney Bayou Fork:</i>	
At confluence with Caney Bayou	*236
At upstream corporate limits	*238
Maps available for inspection at the Jefferson County Courthouse, Baroque and Main Streets, Pine Bluff, Arkansas.	
Send comments to The Honorable Jack Jones, Jefferson County Judge, Jefferson County Courthouse, Baroque and Main Streets, Pine Bluff, Arkansas 71601.	
CONNECTICUT	
Hebron (town), Tolland County	
<i>Amston Lake Brook:</i>	
At State Route 85	*398
At Amston Lake Dam	*520
<i>Raymond Brook:</i>	
At State Route 85	*381
Approximately 80 feet upstream of Robinson Road	*592
<i>West Branch Fawn Brook:</i>	
At Sloum Road	*430
Approximately 100 feet upstream of State Route 85	*542
<i>Fawn Brook:</i>	
At State Route 85	*438
At Meetinghouse Road	*467
<i>Judd Brook:</i>	
Approximately 20 feet upstream of Old Colchester Road	*344
Approximately 640 feet upstream of Old Colchester Road	*347
Maps available for inspection at the Town Clerk's Vault, Town Office, 15 Gilead Street, Hebron, Connecticut.	
Send comments to The Honorable Robert E. Lee, Chief Administrative Officer for the Town of Hebron, Tolland County, 15 Gilead Street, Hebron, Connecticut 06248.	
IDAHO	
Fremont County (unincorporated areas)	
<i>North Fork Teton River:</i>	
At Madison County Line	*4,926
Just upstream of Teton Road Bridge	*4,938
About 500 feet downstream of divergence from Teton River	*4,940
<i>South Fork Teton River:</i>	
At Madison County Line	*4,929
Just upstream of Teton Road Bridge	*4,938
About 2,600 feet upstream of Teton Road Bridge	*4,940
<i>Teton River:</i>	
At divergence of North and South Forks Teton River	*4,940

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At the east side of Section 30 in Township 7N and Range 41E	*4,949
1,000 feet west of Section line 28/29 in Township 7N, Range 41E	*4,958
<i>Henry's Fork:</i>	
Just above Farmer's Friend Canal Diversion Dam	*5,001
About 400 feet downstream of Chester Dam	*5,035
Above Chester Dam	*5,046
About 4,500 feet upstream of Chester Dam	*5,047
<i>Falls River:</i>	
At confluence with Henry's Fork	*5,046
About 400 feet upstream of County Road Bridge	*5,058
About 200 feet downstream of U.S. Highway 20 Bridge	*5,086
Maps are available for review at the Fremont County Courthouse, 151 West First North, St. Anthony, Idaho.	
Send comments to The Honorable James Siddoway, Chairman, Fremont County Board of Commissioners, P.O. Box 448, St. Anthony, Idaho 83445.	
KENTUCKY	
McLean County (unincorporated areas)	
<i>Buck Creek:</i>	
About 1400 feet downstream of State Highway 1080	*395
About 1300 feet upstream of U.S. Route 431	*409
<i>Buck Creek Tributary:</i>	
At mouth	*401
About 2400 feet upstream of U.S. Route 431	*405
<i>Myer Creek:</i>	
At mouth	*389
Just upstream of State Route 81	*403
<i>Green River:</i>	
About 9.2 miles downstream of State Route 58	*386
About 3600 feet upstream of Southern County Boundary	*394
<i>Overflow Ditch:</i>	
At confluence with Buck Creek Tributary	*405
At divergence with Buck Creek	*409
Maps available for inspection at the County Courthouse, Calhoun, Kentucky.	
Send comments to The Honorable Junior McDole, Judge/Executive, McLean County, County Courthouse, Calhoun, Kentucky 42327.	
MAINE	
Arrowsic (town), Sagadahoc County	
<i>Atlantic Ocean</i>	
<i>Sasanoa River:</i>	
At State Route 127	*9
At Palace Cove	*11
<i>Kennebec River:</i>	
At confluence with Sasanoa River	*9
At Bald Head Road extended	*10
<i>Back River:</i>	
At Bald Head Road	*10
At Mill Island	*11
Maps available for inspection at the Town Hall, Star Route 2, Arrowsic, Maine.	
Send comments to The Honorable James Coombs, Chairman of the Town of Arrowsic Board of Selectmen, Sagadahoc County, Town Hall, Star Route 2, Arrowsic, Maine 04530.	
Beals (town), Washington County	
<i>Atlantic Ocean:</i>	
At Pig Island	*12
At Seaduck Point	*25
Maps available for inspection at the Town Office, Beals, Maine.	
Send comments to The Honorable Harleigh Alley, First Selectman of the Town of Beals, Washington County, P.O. Box 25, Beals, Maine 04611.	
Castine (town), Hancock County	
<i>Atlantic Ocean</i>	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<i>Penobscot River:</i>	
At upstream corporate limits	*13
At Turner Point	*14
<i>Penobscot Bay:</i>	
At Ram Island	*11
At Perkins Point	*14
<i>Hatch Cove:</i>	
At Mayo Point Road (extended)	*11
<i>Wadsworth Cove:</i>	
At confluence of Bog Brook	*12
<i>Morse Cove:</i>	
At State Route 166A	*12
<i>Bagaduce River:</i>	
At upstream corporate limits	*11
At confluence with Penobscot Bay	*14
Maps available for inspection at the Town Hall, Castine, Maine.	
Send comments to The Honorable Charles Graves, Castine Town Manager, Hancock County, P.O. Box 204, Castine, Maine 04421	
Enfield (town), Penobscot County	
<i>Penobscot River:</i>	
Downstream corporate limits	*147
Upstream corporate limits	*175
<i>Cold Stream:</i>	
Downstream corporate limits	*137
At Cold Stream Pond Dam	*192
<i>Cold Stream Pond:</i>	
Entire shoreline in community	*192
<i>Brandy Brook:</i>	
At confluence with Cold Stream	*144
Approximately 180 feet upstream of State Routes 155 and 188	*145
Maps available for inspection at the Town Clerk's Office, Enfield, Maine.	
Send comments to The Honorable Carl Clouky, Chairman of the Town of Enfield Board of Selectmen, Penobscot County, P.O. Box 28, Enfield, Maine 04433.	
Lamoine (town), Hancock County	
<i>Jordan River:</i>	
At State Route 204, approximately 1,000 feet west of its intersection with State Route 184	*12
At the shoreline along Old Point	*14
<i>Eastern Bay:</i>	
At the shoreline along Berry Cove	*13
At the shoreline along Old Point	*23
<i>Skilling River:</i>	
At the shoreline along Martins Cove	*11
Approximately 1,500 feet east of the intersection of Seal Point Road and State Route 204	*22
Maps available for inspection at the Town Office, Ellsworth, Maine.	
Send comments to The Honorable Joe Hayes, Lamoine Town Manager, Hancock County, RFD 2, Box 53, Ellsworth, Maine 04605.	
Oxford (town), Oxford County	
<i>Little Androscoggin River:</i>	
At downstream corporate limits	*300
At upstream corporate limits	*326
<i>Thompson Lake Outlet:</i>	
At confluence with Little Androscoggin River	*311
Approximately 300 feet upstream of the Robinson Manufacturing Dam	*327
Maps available for inspection at the Town Clerk's Office, Oxford, Maine.	
Send comments to The Honorable Evan Thurlow, First Selectman of the Town of Oxford, Oxford County, P.O. Box 153, Oxford, Maine 04270	
Surry (town), Hancock County	
<i>Atlantic Ocean</i>	
<i>Union River:</i>	
Approximately 1.1 miles north of Weymouth Point	*12
At Weymouth Point	*14
<i>Patten Bay:</i>	
At State Route 172	*12

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At Poignant Point	*15
<i>Union River Bay:</i>	
At Weymouth Point	*14
Approximately 1,400 feet south of Browns Point	*20
<i>Blue Hill Bay:</i>	
Approximately .8 mile southwest of the Nook	*17
Southeast of High Head	*23
<i>Morgan Bay:</i>	
At Emerton Brook	*12
At the Nook	*15
Maps available for inspection at the Town Office, Surry, Maine.	
Send comments to The Honorable Jonathan Thomas, Administrative Assistant for the Town of Surry, Hancock County, P.O. Box 147, Surry, Maine 04684.	
Winter Harbor (town), Hancock County	
<i>Atlantic Ocean:</i>	
East of Big Moose Island	*11
Approximately 1,000 feet north of Little Moose Island	*22
<i>Frenchman Bay:</i>	
At Slave Island Harbor	*11
At Great Head	*20
<i>Winter Harbor:</i>	
At Moore Road in Mosquito Harbor	*11
Approximately 4,000 feet north of Ravens Nest	*20
<i>Schoodic Harbor:</i>	
Approximately 3,000 feet northeast of Buck Cove	*12
At Rolling Island	*24
Maps available for inspection at the Town Office, Winter Harbor, Maine.	
Send comments to the Honorable Allen Smalidge, Winter Harbor Town Manager, Hancock County, P.O. Box 980, Winter Harbor, Maine 04953.	
Wiscasset (town), Lincoln County	
<i>Atlantic Ocean</i>	
<i>Back River:</i>	
At Foxbird Island	*11
At State Route 144	*11
<i>Sheepscott River:</i>	
At U.S. Route 1	*11
<i>Montsweag Brook:</i>	
At U.S. Route 1	*11
Maps available for inspection at the Town Office, Wiscasset, Maine.	
Send comments to the Honorable Larry Gordon, First Selectman of the Town of Wiscasset, Lincoln County, P.O. Box 328, Wiscasset, Maine 04578.	

MICHIGAN

Frankfort (city), Benzie County	
<i>Lake Michigan:</i> Along shoreline	*585
<i>Botsie Lake:</i> Along shoreline	*585
Maps available for inspection at the City Hall, 412 Main Street, Frankfort, Michigan.	
Send comments to the Honorable Pinky Fairchild, Mayor, City of Frankfort, 412 Main Street, Frankfort, Michigan 49635.	
Iron River (city), Iron County	
<i>Iron River:</i>	
About 1,800 feet downstream of East Genesee Street	*1468
About 1,900 feet upstream of 16th Avenue	*1485
Maps available for inspection at the City Hall, 106 West Genesee Street, Iron River, Michigan.	
Send comments to The Honorable Clint Safford, Mayor, City of Iron River, 106 West Genesee Street, Iron River, Michigan 49935.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
MINNESOTA	
Baxter (city), Crow Wing County	
<i>Mississippi River:</i>	
About 1.9 miles upstream of confluence of Crow Wing River	*1158
About 11.4 miles upstream of confluence of Crow Wing River	*1166
<i>Porch Lake:</i> Along shoreline	*1191
<i>Upper Whipple Lake:</i> Along shoreline	*1196
<i>Lower Whipple Lake:</i> Along shoreline	*1196
<i>Red Sand Lake:</i> Along shoreline	*1199
<i>White Sand Lake:</i> Along shoreline	*1199
Maps available for inspection at the City Administrator's Office, City Hall, Baxter, Minnesota.	
Send comments to The Honorable Don O'Brien, Mayor, City of Baxter, P.O. Box 2626, Baxter, Minnesota 56425.	
Crow Wing County (unincorporated areas)	
<i>Mississippi River:</i>	
About 1.8 miles upstream of confluence of Crow Wing River	*1158
Just downstream of Northwest Paper Company Dam	*1167
Just upstream of Northwest Paper Company Dam	*1177
About 4.4 miles upstream of confluence of Mission Creek	*1188
<i>Rice Lake:</i> Along shoreline	*1178
<i>Black Bear Lake:</i> Along shoreline	*1181
<i>Miller Lake:</i> Along shoreline	*1181
<i>Little Rabbit Lake:</i> Along shoreline	*1182
<i>Red Sand Lake:</i> Along shoreline	*1199
<i>Serpent Lake:</i> Along shoreline	*1249
Maps available for inspection at the Planning and Zoning Administration Office, County Courthouse, 4th & Laurel Streets, Brainerd, Minnesota.	
Send comments to The Honorable John Ferrari, Chairman, County Board, Crow Wing County, 4th & Laurel Streets, Brainerd, Minnesota 56401.	
Fort Ripley (city), Crow Wing County	
<i>Mississippi River:</i>	
At southern county boundary	*1149
About 2300 feet upstream of confluence of Nokasippi River	*1152
Maps available for inspection at the City Clerk's Home, Route 1, Box 3AA, Fort Ripley, Minnesota.	
Send comments to The Honorable Gerald Tschida, Mayor, City of Fort Ripley, c/o Ms. Gladys B. Nelson, City Clerk, Route 1, Box 3AA, Fort Ripley, Minnesota 56449.	
Litchfield (city), Meeker County	
<i>Jewett Creek:</i>	
About 1000 feet downstream of North Armstrong Avenue	*1105
Just upstream of North Sibley Avenue	*1110
About 1050 feet upstream of West 4th Street	*1113
<i>Lake Ripley:</i> Along shoreline	*1128
Maps available for inspection at the Zoning Administrator's Office, City Hall, 126 North Marshall Avenue, Litchfield, Minnesota.	
Send comments to The Honorable Ronald Johnson, Mayor, City of Litchfield, 126 North Marshall Avenue, Litchfield, Minnesota 55355-2185.	
Pipestone (city), Pipestone County	
<i>Main Ditch:</i>	
About 500 feet downstream of Hiawatha Avenue	*1718
Just downstream of County Highway 69	*1726
Maps available for inspection at the City Administrator's Office, City Hall, 119 2nd Avenue, SW., Pipestone, Minnesota.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable Myron Koefs, Mayor, City of Pipestone, 119 2nd Avenue, SW., Pipestone, Minnesota 56164.	
NEW HAMPSHIRE	
Newmarket (town), Rockingham County	
<i>Lamproy River:</i>	
At the Macallen Dam	*30
At the upstream corporate limits	*33
Great Bay: Entire length within community (along eastern corporate limits)	*7
Maps available for inspection at the Selectmen's Office, Town Hall, Main Street, Newmarket, New Hampshire.	
Send comments to The Honorable Arthur Beauchesne, Chairman of the Town of Newmarket Board of Selectmen, Rockingham County, Town Hall, Main Street, Newmarket, New Hampshire 03857.	
NEW YORK	
Thompson (town), Sullivan County	
<i>Neversink River:</i>	
Approximately 150 feet downstream of the downstream corporate limits	*980
At the upstream corporate limits	*1,096
<i>East Mongaup River:</i>	
At confluence with Mongaup River	*1,143
Approximately 1 mile upstream of Harris Road	*1,176
<i>Tributary to Neversink River:</i>	
At confluence with Neversink River	*1,045
At Wolf Lake Dam	*1,290
<i>Mongaup River:</i>	
At confluence with Swinging Bridge Reservoir	*1,076
At confluence of East Mongaup River and Middle Mongaup River	*1,143
<i>Middle Mongaup River:</i>	
At confluence with Mongaup River	*1,143
At upstream corporate limits	*1,224
<i>Sackett Lake Outlet:</i>	
Approximately 1,000 feet downstream of County Route 45	*1,298
At confluence of Sackett Lake	*1,331
Swinging Bridge Reservoir: Entire shoreline within community	*1,076
Maps available for inspection at the Town Hall, Route 42 N, Monticello, New York.	
Send comments to The Honorable David Kaufman, Thompson Town Supervisor, Sullivan County, P.O. Box 872, Monticello, New York 12701.	
OKLAHOMA	
Cherokee County (unincorporated areas)	
<i>Illinois River:</i>	
Approximately 1.2 miles downstream of Combs Road	*767
Approximately .8 mile upstream of confluence of Peavine Hollow Creek	*795
<i>Spring Creek:</i>	
Approximately 1,600 feet downstream of Teresita Road	*833
Approximately 7.0 miles upstream of Teresita Road	*940
<i>Double Spring Creek:</i>	
Approximately 100 feet downstream of confluence of Stream A	*583
Approximately 1.9 miles upstream of Birch Street	*638
<i>East Branch:</i>	
Downstream side of Cedar Avenue	*813
Approximately 1,200 feet upstream of Crafton Street	*666
<i>Stream A:</i>	
At the confluence with Double Spring Creek	*583
Approximately 800 feet upstream of Main Street	*603
<i>Stream B:</i>	
At the confluence with Double Spring Creek	*590
Approximately 1,300 feet upstream of State Route 80	*601

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the County Courthouse, 213 W. Delaware, Tahlequah, Oklahoma.	
Send comments to The Honorable Maxie Thompson, Chairman of the Cherokee County Board of Commissioners, 213 Delaware, Room 202, Tahlequah, Oklahoma 74464.	
Muskogee County (unincorporated areas)	
Arkansas River	
Upper Reach:	
Approximately 1.22 miles downstream of U.S. Route 89.....	*515
Approximately 2.86 miles upstream of Old U.S. Route 69.....	*523
Middle Reach:	
Approximately 2.4 miles downstream of confluence of Coody Creek.....	*512
At Missouri-Kansas-Texas Railroad.....	*517
Lower Reach:	
Approximately 0.78 mile downstream of U.S. Route 100 and U.S. Route 64.....	*481
Approximately 0.36 mile upstream of U.S. Route 100 and U.S. Route 64.....	*482
Coody Creek:	
At the confluence with Arkansas River.....	*513
Approximately 1.6 miles upstream of South 40th Street.....	*600
Coody Creek Tributary A:	
At confluence with Coody Creek.....	*574
Approximately 1 mile upstream of Hancock Street.....	*623
Corta Creek:	
At confluence with Coody Creek.....	*526
Approximately 0.75 mile upstream of Union Pacific Railroad.....	*564
Sam Creek:	
At confluence with Coody Creek.....	*519
Approximately 1.59 miles upstream of Gulick Avenue.....	*559
Sam Creek Tributary A:	
At confluence with Sam Creek.....	*522
Approximately 100 feet upstream of Carol Lee Road.....	*546
Sam Creek Tributary B: Approximately 0.56 mile upstream of confluence with Sam Creek.....	*549
Virgle Creek:	
Approximately 0.86 mile downstream of 24th Street.....	*515
Approximately 0.8 mile upstream of 54th Street.....	*600
Pecan Creek:	
At confluence with Arkansas River.....	*520
Approximately 2.33 miles upstream of N.W. 78th Street.....	*537
Dirty Creek:	
Approximately 0.67 mile downstream of U.S. Route 64.....	*500
Approximately 0.88 mile upstream of confluence of Georges Fork Creek.....	*501
Georges Fork Creek:	
At confluence with Dirty Creek.....	*501
Approximately 0.81 mile upstream of Interstate Route 40.....	*505
Porum Creek Tributary A:	
Approximately 100 feet downstream of State Route 2.....	*563
Approximately 1,000 feet upstream of Cherokee Avenue.....	*569
Stream E:	
At confluence with Coody Creek.....	*517
At Hancock Street.....	*533
Stream G:	
Approximately .34 mile downstream of Hancock Street.....	*534
Approximately 200 feet upstream of Hancock Street.....	*537
Stream I: Approximately 119 feet upstream of Burlington Northern Railroad.....	*572
Grand River:	
Approximately 1.8 miles downstream of Union Pacific Railroad.....	*516
At the County boundary.....	*517
Haskell Creek:	
Approximately 0.13 mile downstream of State Route 104 (Center Street).....	*561

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 325 feet upstream of State Route 104.....	*563
Maps available for inspection at the Muskogee County Courthouse, Muskogee, Oklahoma.	
Send comments to The Honorable Vergie Standridge, Chairman of the Muskogee County Board of Commissioners, P.O. Box 2307, Muskogee, Oklahoma 74402.	
PENNSYLVANIA	
Dunbar (borough), Fayette County	
Dunbar Creek:	
At downstream corporate limits.....	*934
At upstream corporate limits.....	*987
Maps available for inspection at the Borough Building, Dunbar, Pennsylvania.	
Send comments to The Honorable John Maddas, President of the Borough of Dunbar Council, Fayette County, 3 Forest Avenue, Bryson Hill, Dunbar, Pennsylvania 15431.	
East Butler (borough), Butler County	
Bonnie Brook:	
At downstream corporate limits.....	*1,018
Approximately 225 feet upstream of upstream corporate limits.....	*1,028
Maps available for inspection at the Borough Building, Madison Avenue, East Butler, Pennsylvania.	
Send comments to The Honorable Earl Fennell, President of the East Butler Borough Council, Butler County, P.O. Box 87, East Butler, Pennsylvania 16029.	
Franklin (township), Fayette County	
Redstone Creek:	
Approximately 225 feet downstream of State Route 4026.....	*866
At upstream corporate limits.....	*921
Bute Run:	
At downstream corporate limits.....	*927
Approximately 350 feet upstream of State Route 4010.....	*969
Youghiogheny River:	
At downstream corporate limits.....	*833
At upstream corporate limits.....	*848
Maps available for inspection at the Township Building, R.D. #1, Box 122, Vanderbilt, Pennsylvania.	
Send comments to The Honorable George Bozek, Vice Chairman of the Township of Franklin Board of Supervisors, Fayette County, R.D. #1, Box 237, Perryopolis, Pennsylvania 15473.	
Saltlick (township), Fayette County	
Indian Creek:	
At the downstream corporate limits.....	*1,374
At the upstream corporate limits.....	*1,482
Back Creek:	
At the confluence with Indian Creek.....	*1,391
Approximately 700 feet upstream of T-727.....	*1,570
Maps available for inspection at the Township Building, Saltlick, Pennsylvania.	
Send comments to The Honorable Donald Gales, Chairman of the Township of Saltlick Board of Supervisors, Fayette County, P.O. Box 229, Indian Head, Pennsylvania 15446.	
Sandy Lake (borough), Mercer County	
Sandy Creek:	
At downstream corporate limits.....	*1,157
At upstream corporate limits.....	*1,166
Outlet to Sandy Lake:	
At the confluence with Sandy Creek.....	*1,158
At corporate limits.....	*1,163
Maps available for inspection at the Borough Building, 261 Main Street, Sandy Lake, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable Joseph Clayton, President of the Borough of Sandy Lake Council, Mercer County, Latham Road, Sandy Lake, Pennsylvania 16145.	
South Pymatuning (township), Mercer County	
McCullough Run:	
At the downstream corporate limits.....	892
Approximately .45 mile upstream of State Route 718.....	*1,008
Maps available for inspection at the Township Building, Tamarack Drive, Sharpsville, Pennsylvania.	
Send comments to The Honorable Wendell McCulloch, Chairman of the Township of South Pymatuning Board of Supervisors, Mercer County, Township Building, Tamarack Drive, Sharpsville, Pennsylvania 16150.	
Springhill (township), Fayette County	
Monongahela River:	
At downstream corporate limits.....	*800
At upstream corporate limits.....	*809
Chest River:	
At confluence with Monongahela River.....	*808
At upstream corporate limits.....	*817
Maps available for inspection at the Township Building, Smithfield, Pennsylvania.	
Send comments to The Honorable Ernest Dodson, Chairman of the Township of Springhill Board of Supervisors, Fayette County, Box 113, New Geneva, Pennsylvania 15467.	
Stoneboro (borough), Mercer County	
Sawmill Run:	
Approximately 660 feet downstream of downstream corporate limits.....	*1,232
Approximately 700 feet upstream of U.S. Route 62.....	*1,232
Maps available for inspection at the Borough Building, 2655 Lake Street, Stoneboro, Pennsylvania.	
Send comments to The Honorable Dennis Carlson, President of the Stoneboro Borough Council, Mercer County, Box 337, Stoneboro, Pennsylvania 16153.	
Utica (borough), Venango County	
French Creek:	
At downstream corporate limits.....	*1,032
Approximately 140 feet upstream of upstream corporate limits.....	*1,040
Maps available for inspection at the Borough Building, R.D. 1, Box 189, Utica, Pennsylvania.	
Send comments to The Honorable Audrey M. Dick, President of the Borough of Utica Council, Venango County, R.D. 1, Box 189, Utica, Pennsylvania 16362.	
TENNESSEE	
Hamblen County (unincorporated areas)	
Nolichucky River:	
About 1.19 miles downstream of Enka Dam.....	*1,022
About 800 feet upstream of confluence of Bent Creek.....	*1,044
Bent Creek:	
At confluence with Nolichucky River.....	*1,043
About 1,900 feet upstream of Interstate 81.....	*1,049
Cherokee Lake: Along shoreline.....	*1,075
Sinking Creek:	
At county boundary.....	*1,173
Just downstream of Norfolk Southern Railway (about 0.46 mile upstream of Wallace Farm Road).....	*1,195
Just upstream of Norfolk Southern Railway (about 0.46 mile upstream of Wallace Farm Road).....	*1,201
At confluence of Tributary to Sinking Creek.....	*1,268
Panther Creek:	
At mouth.....	*1,075

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just downstream of Panther Lake Dam	*1,169
Just upstream of Panther Lake Dam	*1,179
Just downstream of Mountain Laurel Road	*1,179
Just upstream of Mountain Laurel Road	*1,187
About 2,200 feet upstream of Mountain Laurel Road	*1,194
Tributary to Sinking Creek:	
At mouth	*1,268
Just downstream of Norfolk Southern Railway	*1,272
Just upstream of Norfolk Southern Railway	*1,277
About 300 feet upstream of Sulphur Springs Road	*1,293
Maps available for inspection at the County Courthouse, Morristown, Tennessee.	
Send comments to The Honorable Paul L. Bruce, County Executive, Hamblen County, County Courthouse, Morristown, Tennessee 37743.	
Hawkins County (unincorporated areas)	
Holston River:	
At Cherokee Lake	*1,075
About 1,400 feet downstream of Goshen Valley Road	*1,142
About 2,700 feet upstream of U.S. Government Railroad	*1,176
North Fork Holston River:	
About 1,700 feet downstream of CSX railroad	*1,179
About 1,950 feet upstream of Carter Valley Road	*1,205
Crockett Creek:	
At mouth	*1,075
About 1.84 miles upstream of Arrowhead Drive	*1,222
Maps available for inspection at the County Courthouse, 150 Washington Street, Rogersville, Tennessee.	
Send comments to The Honorable Doug Price, County Executive, Hawkins County, 150 Washington Street, Rogersville, Tennessee 37857.	
TEXAS	
Clay County (unincorporated areas)	
Dry Fork Little Wichita River:	
Approximately 1.4 miles downstream of U.S. Route 82	*653
Approximately 3.6 miles upstream of County Road 2847	*902
Lake Arrow Head: Entire shoreline within community	*932
Maps available for inspection at the County Courthouse, Henrietta, Texas.	
Send comments to The Honorable Bill Nobles, Clay County Judge, P.O. Box 431, Henrietta, Texas 76365.	
Grayson County (unincorporated areas)	
Iron Ore Creek:	
Approximately 200 feet upstream of confluence with Choctaw Creek	*538
Approximately 1.9 miles upstream of Preston Road	*712
Choctaw Creek:	
Approximately 500 feet upstream of confluence of Iron Ore Creek	*538
Approximately 2.5 miles upstream of Moore Road	*731
Red River:	
Approximately 2.2 miles downstream of State Route 120	*517
Approximately 2 miles upstream of U.S. Routes 69 and 75	*535
West Prong Whites Creek:	
At County boundary	*660
Approximately 1.7 miles upstream of State Route 121	*712
Ellsworth Branch:	
At the confluence with Iron Ore Creek	*626
Approximately 1.9 miles upstream of State Route 691	*708
Loy Creek:	
At the confluence with Iron Ore Creek	*625
Approximately 825 feet upstream of Loy Lake Road	*660

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Post Oak Creek:	
At the confluence with Choctaw Creek	*625
Approximately 800 feet downstream of U.S. Route 82	*741
Sand Creek:	
Approximately 500 feet upstream of State Route 1417	*711
Approximately 1.6 miles upstream of Washington Avenue	*746
Stream B:	
Approximately 2,200 feet downstream of U.S. Route 82	*666
At the City of Sherman corporate limits	*726
Waterloo Creek: Entire length of stream within county	*620
Stream G:	
At the confluence with Choctaw Creek	*694
Approximately 2.6 miles upstream of confluence with Choctaw Creek	*761
Call Creek:	
Approximately 6.5 miles upstream of confluence with Choctaw Creek	*653
Approximately 7.8 miles upstream of confluence with Choctaw Creek	*678
Maps available for inspection at the County Courthouse, Sherman, Texas.	
Send comments to The Honorable John H. Crawford, Grayson County Judge, Grayson County Courthouse, Sherman, Texas 75090.	
Lucas (city), Collin County	
Muddy Creek (upper reach):	
Approximately 150 feet downstream of FM 2514	*544
Approximately 130 feet upstream of County Road	*573
White Rock Creek (east):	
Approximately 850 feet downstream of Blundy Jhune Road	*524
Approximately 60 feet upstream of FM 1378	*583
Field Branch:	
At confluence with White Rock Creek (east)	*524
Approximately 350 feet downstream of Blundy Jhune Road	*550
Maps available for inspection at the City Hall, 325 West Lucas Road, Lucas, Texas.	
Send comments to The Honorable Gerry Guzman, Mayor of the City of Lucas, Collin County, 325 West Lucas Road, Lucas, Texas 75002.	
VERMONT	
Bradford (town), Orange County	
Connecticut River:	
At downstream corporate limits	*411
At upstream corporate limits	*414
Waits River:	
At Smith Hydroelectric Station Dam	*464
At upstream corporate limits	*621
Maps available for inspection at the Town Clerk's Office, Town and Village Offices, Bradford, Vermont.	
Send comments to The Honorable Robert Claffin, Chairman of the Town of Bradford Board of Selectmen, Orange County, P.O. Box 339, Bradford, Vermont 05033.	
Bradford (village), Orange County	
Waits River:	
At Smith Hydroelectric Dam	*464
At the upstream corporate limits	*474
Connecticut River:	
Downstream corporate limits	*414
U.S. Route 5	*414
Maps available for inspection at the Town Clerk's Office, Town and Village Offices, Bradford, Vermont.	
Send comments to The Honorable Phyllis Lavelle, Chairman of the Village of Bradford Board of Trustees, Orange County, P.O. Box 301, Bradford, Vermont 05033.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
West Windsor (town), Windsor County	
Mill Brook:	
Downstream corporate limits	*617
Upstream corporate limits	*645
Maps available for inspection at the Town Clerk's Office, Brownsville, Vermont.	
Send comments to The Honorable Robert Farnsworth, Chairman of the Town of West Windsor Board of Selectmen, Windsor County, P.O. Box 6, Brownsville, Vermont 05037.	
WEST VIRGINIA	
Belmont (Town), Pleasants County	
Ohio River:	
At approximately .5 mile southwest along State Route 2 from its intersection with Emerald Street	*623
At approximately 800 feet northeast along State Route 2 from its intersection with Sun Street	*624
Maps available for inspection at the Town Hall, 218 Main Street, Belmont, West Virginia.	
Send comments to The Honorable Carolyn Peluso, Mayor of the Town of Belmont, Pleasants County, 218 Main Street, Belmont, West Virginia 26134.	
Boone County (Unincorporated Areas)	
Big Coal River:	
Approximately .3 mile downstream of confluence of Slack Hollow	*644
Approximately .3 mile downstream of confluence of Toms Branch	*631
Little Coal River:	
Approximately 1.4 miles downstream of Big Pinnacle Branch	*660
At the State Route 17 (approximately 2.4 miles upstream of U.S. Route 119 Town of Danville corporate limits)	*702
Spruce Fork:	
At the confluence with Little Coal River	*702
At the County boundary	*605
Pond Fork:	
At the confluence with Little Coal River (City of Madison corporate limits)	*702
Approximately 300 feet upstream of confluence of Rocklick Branch	*1,160
Spruce Laurel Fork:	
At the confluence with Spruce Fork	*604
Approximately .3 mile upstream of CSX Transportation	*617
West Fork:	
Approximately .3 mile downstream of confluence of Bandy Branch	*974
Approximately 875 feet upstream of confluence of Little Ugly Branch	*1,078
Maps available for inspection at the Office of Emergency Services, Boone County, 200 State Street, Madison, West Virginia.	
Send comments to The Honorable Susie Rogers, President of the Boone County Commission, County Courthouse, 200 State Street, Madison, West Virginia 25130.	
Braxton County (Unincorporated Areas)	
Little Kanawha River:	
At the confluence of Buffalo Creek	*756
At approximately .6 mile upstream of the upstream Town of Burnsville corporate limits	*759
Oil Creek:	
At Interstate Route 79	*759
At the confluence of Clover Fork County boundary	*762
Saltlick Creek:	
Approximately .3 mile downstream of Interstate Route 79	*761
At the CSX Transportation	*769
Elk River:	
At the County boundary	*786
At approximately 600 feet upstream of Town of Sutton corporate limits	*828

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the County Clerk's Office, Braxton County Courthouse, Sutton, West Virginia.	
Send comments to The Honorable Harry L. Wright, President of the Braxton County Commission, P.O. Box 485, Sutton, West Virginia 26601.	
Burnsville (Town), Braxton County	
Little Kanawha River:	
At approximately .3 mile downstream of State Route 5.....	*757
At approximately 200 feet upstream of upstream corporate limits.....	*759
Oil Creek:	
At the confluence with the Little Kanawha River.....	*759
At approximately .2 mile upstream of County Route 1-7.....	*761
Saltlick Creek:	
At the confluence with the Little Kanawha River.....	*759
At approximately .4 mile upstream of County Highway 5-11.....	*761
Maps available for inspection at the Town Hall, Municipal Street, Burnsville, West Virginia.	
Send comments to The Honorable Alex Fominko, Sr., Mayor of the Town of Burnsville, Braxton County, Box 305, Burnsville, West Virginia 26335.	
Calhoun County (Unincorporated Areas)	
Little Kanawha River:	
At the confluence of Lemuels Run.....	*677
At approximately .9 mile upstream of confluence of Yellow Creek.....	*680
At approximately .84 mile downstream of the confluence of Deadening Run.....	*693
At the upstream corporate limits of the Town of Grantsville.....	*698
West Fork Little Kanawha River:	
At approximately .38 mile downstream of U.S. Routes 33 and 119.....	*728
At approximately 0.2 mile upstream of Country Route 15.....	*793
Millstone Creek:	
At confluence with West Fork Little Kanawha River.....	*738
At approximately 260 feet upstream of confluence of Big Fork.....	*812
Big White Oak Run:	
At confluence with West Fork Little Kanawha River.....	*793
At approximately .4 mile upstream of County Route 15-2.....	*808
Maps available for inspection at the County Clerk's Office, Calhoun County Courthouse, Grantsville, West Virginia.	
Send comments to The Honorable Hayes Haymaker, President of the Calhoun County Commission, P.O. Box 230, Grantsville, West Virginia 26147.	
Danville (Town), Boone County	
Little Coal River:	
At the downstream corporate limits (downstream side of U.S. Route 119).....	*694
At the upstream corporate limits.....	*697
Maps available for inspection at the Town Hall, Danville, West Virginia.	
Send comments to The Honorable Mark McClure, Mayor of the Town of Danville, Boone County, P.O. Box 459, Danville, West Virginia 25053.	
Gassaway (town), Braxton County	
Elk River:	
At State Route 4 approximately 0.3 mile downstream of downstream corporate limits.....	*817
At the upstream corporate limits.....	*820

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Mayor's Office, Town Hall, Gassaway, West Virginia 26624.	
Send comments to The Honorable Charles Keaton, Mayor of the Town of Gassaway, Braxton County, 416 Elk Street, Gassaway, West Virginia 26624.	
Grantsville (town), Calhoun County	
Little Kanawha River:	
At the downstream corporate limits.....	*696
At the upstream corporate limits.....	*698
Maps available for inspection at the Mayor's Office, High Street, Grantsville, West Virginia.	
Send comments to The Honorable Sandra Johnson, Mayor of the Town of Grantsville, Calhoun County, P.O. Box 148, Grantsville, West Virginia 26147.	
Madison (city), Boone County	
Little Coal River:	
At the downstream corporate limits.....	*697
At the upstream corporate limits.....	*702
Pond Fork:	
At the confluence with Little Coal River.....	*702
Approximately 900 feet upstream of confluence.....	*703
Spruce Fork:	
At the confluence with Little Coal River.....	*702
At the upstream corporate limits.....	*704
Maps available for inspection at the City Hall, 261 Washington Avenue, Madison, West Virginia.	
Send comments to The Honorable Herman Caudill, Mayor of the City of Madison, Boone County, 261 Washington Avenue, Madison, West Virginia 25130.	
Pleasants County (unincorporated areas)	
Ohio River:	
At the confluence of Bull Creek.....	*620
At the confluence of Bens Run.....	*629
Middle Island Creek:	
At the confluence with the Ohio River.....	*626
At the County boundary.....	*641
Maps available for inspection at the County Clerk's Office, Pleasants County Courthouse, St. Marys, West Virginia.	
Send comments to The Honorable Billy L. Eldor, President of the Pleasants County Commission, Pleasants County Courthouse, St. Marys, West Virginia 26170.	
St. Marys (city), Pleasants County	
Ohio River:	
Approximately 650 feet southwest along State Route 2 from its intersection with Bridge Street.....	*625
At approximately 80 feet southwest along State Route 2 from its intersection with South Bradfield.....	*627
Middle Island Creek:	
At approximately 125 feet downstream of CSX Transportation.....	*626
At approximately 2,000 feet upstream of State Route 2.....	*628
Maps available for inspection at the Town Hall, 418 2nd Street, St. Marys, West Virginia.	
Send comments to The Honorable Arthur Olds, Mayor of the City of St. Marys, Pleasants County, 418 2nd Street, St. Marys, West Virginia 26170.	
Sutton (town), Braxton County	
Elk River:	
Approximately 0.4 mile upstream of County Highway 28-5.....	*825
At approximately 600 feet upstream of the confluence of Old Woman Run.....	*828

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Mayor's Office, Sutton Community Building, Sutton, West Virginia.	
Send comments to The Honorable Edward R. Given, Mayor of the Town of Sutton, Braxton County, P.O. Box 305, Sutton, West Virginia 26601.	
Sylvester (Town), Boone County	
Big Coal River:	
At the downstream corporate limits.....	*786
Approximately 300 feet upstream of upstream corporate limits.....	*793
Maps available for inspection at the Community Building, Sylvester, West Virginia, by appointment with Mayor Anderson.	
Send comments to The Honorable Ralph Anderson, Mayor of the Town of Sylvester, Boone County, Sylvester, West Virginia 25193.	
Whitesville (Town), Boone County	
Big Coal River:	
Approximately 300 feet downstream of downstream corporate limits.....	*818
Approximately 200 feet upstream of upstream corporate limits.....	*833
Maps available for inspection at the Town Hall, Boone Street, Whitesville, West Virginia.	
Send comments to The Honorable William Howell, Mayor of the Town of Whitesville, Boone County, Whitesville, West Virginia 25209.	
WISCONSIN	
Arcadia (City), Trempealeau County	
Trempealeau River:	
About 1800 feet downstream of West Main Street.....	*727
About 1.5 miles upstream of West Main Street.....	*734
Turton Creek:	
At mouth.....	*731
About 2100 feet upstream of Oak Street.....	*740
Maps available for inspection at the City Hall, 203 Main Street, Arcadia, Wisconsin.	
Send comments to The Honorable Eugene Killian, Mayor, City of Arcadia, City Hall, 203 Main Street, Arcadia, Wisconsin 54612.	
Bloomer (City), Chippewa County	
Duncan Creek:	
About 1.2 miles downstream of Newman Street.....	*968
About 1.1 miles upstream of Bloomer Dam.....	*1000
Maps available for inspection at the City Hall, 1503 Main Street, Bloomer, Wisconsin.	
Send comments to The Honorable Arthur G. Stuck, Mayor, City of Bloomer, City Hall, 1503 Main Street, Bloomer, Wisconsin 54724.	
Peshigo (City), Marinette County	
Peshigo River:	
About 0.6 mile downstream of Peshigo Dam.....	*596
Just downstream of Peshigo Dam.....	*597
Just upstream of Peshigo Dam.....	*604
About 1.0 mile upstream of Peshigo Dam.....	*604
Trout Brook:	
At mouth.....	*604
About 0.5 mile upstream of Emery Avenue.....	*605
Maps available for inspection at the City Hall, 331 French Street, Peshigo, Wisconsin.	
Send comments to The Honorable Henry Drees, Mayor, City of Peshigo, City Hall, 331 French Street, P.O. Box 100, Peshigo, Wisconsin 54157.	

The proposed modified base (100-year) flood elevations for selected locations are:

Proposed Modified Base (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas.....	Logan County unincorporated areas.	Arkansas River.....	Approximately 0.28 mile upstream of downstream County boundary.	*342	*341
			At upstream County boundary.....	*373	*366
		Delaware Creek.....	Approximately 660 feet downstream County boundary.	*341	*340
			Approximately 400 feet upstream of downstream County boundary.	*341	*340
		Shoal Creek.....	At confluence with Arkansas River.....	*348	*343
			Approximately 2.1 miles upstream of confluence with Little Shoal Creek.	*349	*348
		Little Shoal Creek.....	At confluence with Shoal Creek.....	*349	*344
		Cane Creek.....	Downstream side of State Route 22.....	*347	*349
			Approximately 0.32 mile downstream of State Route 197.	*355	*352
			Approximately 0.53 mile downstream of State Highway 109.	*355	*354

Maps available for inspection at the Logan County Courthouse, Room #22, Paris, Arkansas.

Send comments to The Honorable Bill Roberts, Logan County Judge, Logan County Courthouse, Paris, Arkansas 72855.

California.....	Merced County, unincorporated areas.	Miles Creek.....	At Santa Fe Avenue.....	*230	*229
			Just upstream of Childs Avenue.....	*234	*232
			At Planada Canal.....	*238	*234
			At Le Grand Canal.....	None	*254

Maps are available for review at the Merced County Planning Department, 2222 M Street, Merced, California.

Send comments to The Honorable Mike Bogne, Chairman, Merced County Board of Supervisors, 2222 M Street, Merced, California 95340.

Connecticut.....	Canton, Town, Hartford County.	Cherry Brook.....	Approximately 80 feet upstream of U.S. Route 44.	*314	*313
			Approximately 1,600 feet upstream of State Route 179.	*702	*701
		Farmington River.....	Approximately 0.42 mile upstream of State Route 179.	*298	*297
			Approximately 0.83 mile upstream of U.S. Route 202.	*317	*318
		Nepaug River.....	At confluence with Farmington River.....	None	*305
			At upstream corporate limits.....	None	*373
		Rattlesnake Brook.....	Approximately 270 feet downstream of Dyer Avenue.	*299	*298
			Approximately 10 feet upstream of East Hill Road.	*473	*469
		East Branch Rattlesnake Brook.	At confluence with Rattlesnake Brook just upstream of Mills Lane.	None	*333
			Approximately 1,050 feet of Dowd Avenue.....	None	*340
		Jim Brook.....	At downstream corporate limits.....	*284	*285
			Approximately 100 feet upstream of Lawton Road.	None	*340
		Barbour Brook.....	At confluence with Cherry Brook.....	*408	*403
			Approximately 40 feet upstream of Barbourtown Road.	None	*508

Maps available for inspection at the Town Clerk's Safe, 4 Market Street, Collinsville, Connecticut.

Send comments to The Honorable Mary Fletcher, Chairwoman of the Town of Canton Board of Selectmen, Hartford County, 4 Market Street, Collinsville, Connecticut 06022.

Connecticut.....	Oxford, Town, New Haven County.	Housatonic River.....	At the downstream corporate limits.....	*49	*46
			At downstream side of Stevenson Dam.....	*56	*58
		Lake Zoar.....	Entire shoreline within community.....	None	*109
		Fivemile Brook.....	At confluence with Housatonic River.....	*54	*53
			Approximately 140 feet upstream of confluence with Housatonic River.	*54	*53

Maps available for inspection at the Town Clerk's Vault, Town Hall, Oxford, Connecticut.

Send comments to The Honorable Raymond Drapko, First Selectman of the Town of Oxford, New Haven County, Town Hall, Oxford, Connecticut 06487.

Florida.....	City of Fort Pierce, St. Lucie County.	Atlantic Ocean.....	About 100 feet east of intersection of Indian Atlantic Drive and South Ocean Drive.	None	# 1
		Atlantic Ocean/Indian River.....	At intersection of Sunset Isles Road and Eucalyptus Avenue.	*7	*5
			About 300 feet east of intersection of Indian Atlantic Drive and South Ocean Drive.	*11	*14
		Moore's Creek.....	At mouth.....	*8	*5
			Just upstream of South 29th Street.....	None	*22
		Fivemile Creek.....	Within Community.....	None	*17

Proposed Modified Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Building Department, City Hall Annex, 315 Avenue A, Fort Pierce, Florida. Send comments to The Honorable James A. Powell, City Manager, City of Fort Pierce, P.O. Box 1480, Fort Pierce, Florida 34954.					
Florida	City of Port St. Lucie, St. Lucie County.	Blakeslee Creek Tributary	At mouth	*7	*7
			About 0.97 mile upstream of mouth	*7	*10
		Winters Creek	About 1300 feet upstream of mouth	*7	*7
			About 1.6 miles upstream of mouth	*7	*9
		North Fork St. Lucie River	About 1.15 miles downstream of Port St. Lucie Boulevard.	*8	*7
			About 2.6 miles upstream of Prima Vista Boulevard.	*10	*8
		Indian River	About 50 feet east of Walton Road and State Road 707.	None	*7
			Along Shoreline	None	*11
		Blakeslee Creek	About 500 feet upstream of mouth	*8	*7
			About 1.37 miles upstream of mouth	*7	

Maps available for inspection at the Building Department, City Hall, 121 SW. Port St. Lucie Boulevard, Port St. Lucie, Florida.

Send comments to The Honorable G. Wayne Allgire, City Manager, City of Port St. Lucie, 121 SW. Port St. Lucie Boulevard, Port St. Lucie, Florida 34984.

Florida	Unincorporated Areas of St. Lucie County.	Tenmile Creek Tributary	At mouth	None	*20
			Just downstream of McCarty Road	None	*20
		Tenmile Creek	At confluence with North Fork St. Lucie River	*11	*10
			Just downstream of Sunshine State Parkway	*15	*16
			Just downstream of Okeechobee Road	None	*21
		Taylor Creek	About 500 feet upstream of mouth	None	*11
			About 1.76 miles upstream of St. Lucie Boulevard.	None	*19
		Fivemile Creek	At mouth	*11	*10
			Just downstream of Whiteway Dairy road	*14	*17
			Just downstream of Peterson Road	None	*17
		Platts Branch	At mouth	None	*10
			Just upstream of U.S. Route 1	None	*12
		Winters Creek	At mouth	*9	*7
			About 1300 feet upstream of mouth	*7	*7
		Blakeslee Creek	At mouth	*9	*7
			About 500 feet upstream of mouth	*8	*7
		North Fork St. Lucie River	About 2.3 miles downstream of Port St. Lucie Boulevard.	*7	*7
			At confluence of Tenmile Creek	*11	*10
		Atlantic Ocean/Indian River	About 750 feet west of Mimosa Avenue and Coconut Drive.	*7	*5
			Along shoreline, about 1.2 miles east of Blue Hole Point.	*11	*15
		Atlantic Ocean	About 150 feet east of Banyan Road and Tamarino Drive intersection.	*None	#1
			About 250 feet east of Banyan Road and Tamarino Drive intersection.	None	#2

Maps available for inspection at the Community Development Department, Administration Complex, 2300 Virginia Avenue, Fort Pierce, Florida.

Send comments to The Honorable James V. Chisholm, County Administrator, St. Lucie County, Administration Complex, 2300 Virginia Avenue, Room 104, Fort Pierce, Florida 34982.

Florida	Town of St. Lucie Village, St. Lucie County.	Indian River	About 700 feet east of intersection of Milton Road and Old Dixie Highway.	*7	*5
			Just east of intersection of Chamberlain Boulevard and Indian River Drive.	*7	*9

Maps available for inspection at the St. Lucie Village Town Hall, St. Lucie Boulevard, St. Lucie Village, Florida.

Send comments to The Honorable W.A. Granitz, Mayor, Town of St. Lucie Village, P.O. Box 3878, Fort Pierce, Florida 34946.

Massachusetts	Auburn, Town Worcester County.	Dark Brook	Approximately 0.44 mile upstream of confluence with Auburn Pond.	*512	*511
			At downstream side of Central Street Bridge	*535	*536

Maps available for inspection at the Town Planner's Office, 104 Central Street, Auburn, Massachusetts.

Send comments to The Honorable Joan Cassidy, Chairwoman of the Town of Auburn Board of Selectmen, Worcester County, Town Office, 104 Central Street, Auburn, Massachusetts 01501.

Michigan	Charter Township of Pittsfield, Washtenaw County.	Pittsfield-Ann Arbor Drain	About 800 feet downstream of Dam No. 1	*805	*800
			Just downstream of Dam No. 1	*805	*802
			Just upstream of Dam No. 1	*810	*807
			Just downstream of State Road	None	*821
		Wood Outlet Drain	About 1100 feet downstream of Maple Road	*805	*804
			About 1.0 mile upstream of Maple Road	*811	*810

Proposed Modified Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Township Hall, 701 West Ellsworth Road, Ann Arbor, Michigan.

Send comments to The Honorable A. Jackson Morris, Township Supervisor, Charter Township of Pittsfield, 701 West Ellsworth Road, Ann Arbor, Michigan 48104.

New Jersey	Liberty, Township Warren County.	Pequest River	Approximately 650 feet north of the intersection of Hope Road and the eastern corporate limits.	None	*517
			Approximately 850 feet south of the intersection of Shades of Death Road and the corporate limits.	None	*519

Maps available for inspection at the Town Clerk's Office, Municipal Building, Great Meadows, New Jersey.

Send comments to The Honorable John Irwin, Jr., Mayor of the Township of Liberty, Warren County, P.O. Box 305, Municipal Building, Mt. Lake Road, Great Meadows, New Jersey 07838

Oklahoma	Del City, City Oklahoma County.	Crutcho Creek	Upstream side of Sooner Road	*1,172	*1,170
			Downstream side of Sooner Road	*1,195	*1,196
		Crutcho Creek Tributary A	At confluence with Crutcho Creek	*1,192	*1,194
			Approximately 400 feet upstream of S.E. 20th Street.	*1,193	*1,194
		Crutcho Creek Tributary B	At confluence with Crutcho Creek	*1,195	*1,196
			Approximately 750 feet upstream of confluence with Crutcho Creek.	*1,195	*1,196

Maps available for inspection at 4517 S.E. 29th, Del City, Texas.

Send comments to The Honorable John Zakariassen, Manager of the City of Del City, Oklahoma County, P.O. Box 15177, Oklahoma 73155-5177.

Rhode Island	Smithfield (town) Providence County.	Woonasquatucket River	Approximately 1,000 feet downstream of Esmond Miller Road.	*117	*116
			At upstream corporate limits	None	*259
		Stillwater River	Approximately 200 feet downstream of Mountindale Avenue.	*214	*211
			Approximately 1,125 feet upstream of Greenville Road.	None	*322
		Unnamed tributary	Approximately 850 feet downstream of South Glen Drive.	*250	*241
			At Slack Reservoir Dam	*276	*264

Maps available for inspection at the Town Engineer's Office, 64 Farnum Pike, Esmond, Rhode Island 02917.

Send comments to The Honorable Anthony B. Simeone, President of the Town of Smithfield Council, Providence County, 64 Farnum Pike, Esmond, Rhode Island 02917.

Tennessee	Unincorporated areas of Greene County.	Pond Creek	About 600 feet downstream of Brown Springs Road.	None	*1062
			About 0.56 mile upstream of Jim Kirk Road	None	*1098
		Lick Creek	Just upstream of Green Road	None	*1074
			Just downstream of Andrew Johnson Highway	None	*1091

Maps available for inspection at the County Courthouse, Greenville, Tennessee.

Send comments to The Honorable John G. Hankins, County Executive, Greene County, Courthouse, Greenville, Tennessee 37743.

Texas	Cameron County, unincorporated areas.	Gulf of Mexico	Approximately 800 feet south of southwestern tip of South Padre Island corporate limits.	*6	*7
			Eastern edge of Padre Island at northern corporate limits.	*10	*13
		Laguna Madre	Western edge of Padre Island of northern corporate limits.	*9	*10

Maps available for inspection at 964 E. Harrison, Brownsville, Texas.

Send comments to The Honorable Antonio O. Garza, Jr., Cameron County Judge, 964 E. Harrison, Brownsville, Texas 78520.

Texas	South Padre Island, town, Cameron County.	Gulf of Mexico	Approximately 2,000 feet south of northern corporate limits along Padre Boulevard.	None	*6
			At Tropical Drive	*6	*7
			At Coronado Drive	*8	*7
			Just west of Gulf Boulevard between Kingfish Street and Whiting Street.	None	*7
			At Haas Drive	*6	*7
			Approximately 1,300 feet northeast of Sunset Drive.	None	*8
			At Gulf Boulevard between Aries Drive and Capricorn Drive.	None	*8
			Approximately 300 feet landward of shoreline near southern corporate limits.	*7	*11
			East of Gulf Boulevard near Huisache Street extended.	*7	*11
			At Gulf Boulevard between Constellation Drive and Mars Lane.	*6	*11
			Entire shoreline	*10	*13

Proposed Modified Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at 4501 Padre Boulevard, South Padre Island, Texas. Send comments to The Honorable Robert Pinkerton, Jr., Mayor of the Town of South Padre Island, Cameron County, P.O. Box 3410, South Padre Island, Texas 78597.					
Wisconsin	City of Cedarburg, Ozaukee County.	Cedar Creek	At corporate limits	*710	*711
			Just downstream of Ruck Dam	*780	*782
			Just upstream of Ruck Dam	*787	*788
			At corporate limits	*804	*805
Maps available for inspection at the Engineering Office, City Hall, W63 N645 Washington Avenue, Cedarburg, Wisconsin. Send comments to The Honorable Frederick Beyer, City of Cedarburg, P.O. Box 49, Cedarburg, Wisconsin 53012.					
Wisconsin	Village of Fredonia, Ozaukee County.	Milwaukee River	About 850 feet downstream of confluence of Unnamed Tributary No. 2	*780	*780
			Just downstream of State Highway 84	*783	*784
		Unnamed Tributary No. 2	At mouth	*780	*780
			Just downstream of Dam	*797	*797
		Unnamed Tributary No. 3	At mouth	None	*791
			About 600 feet upstream of Meadowbrook Lane.	None	*798
Maps available for inspection at the Public Works Department, Village Hall, 416 Fredonia, Fredonia, Wisconsin. Send comments to The Honorable William Rathsack, President, Village of Fredonia, Village Hall, 416 Fredonia, Fredonia, Wisconsin 53021.					
Wisconsin	Village of Grafton, Ozaukee County.	Milwaukee River	About 2100 feet downstream of the Lime Kiln Dam.	*700	*704
			Just downstream of Chair Factory Dam	*715	*722
			Just upstream of Chair Factory Dam	*727	*729
			About 2850 feet upstream of Washington Street.	*742	*743
		Mole Creek	At mouth	None	*746
			Just upstream of North Green Bay Road	None	*752
			Just downstream of 9th Avenue	None	*756
			Just upstream of 9th Avenue	None	*761
			About 800 feet upstream of Cedar Creek Road	None	*762
Maps available for inspection at the Building Inspection Department, Village Hall, 1102 Bridge Street, Grafton, Wisconsin. Send comments to The Honorable James Grant, President, Village of Grafton, Village Hall, P.O. Box 125, Grafton, Wisconsin 53024.					
Wisconsin	City of Mequon, Ozaukee County.	Milwaukee River	Just upstream of county boundary	*653	*653
			Just downstream of Pioneer Road	*670	*670
		Little Menomonee River	At county boundary	None	*720
			Just upstream of Freistadt Road	None	*731
		Little Menomonee Creek	At mouth	None	*725
			Just downstream of Freistadt Road	None	*796
		Pigeon Creek	At mouth	None	*660
			Just upstream of Williamsburg Drive	None	*666
		Lake Michigan	Along shoreline	*583	*590
Maps available for inspection at the City Hall, 11333 North Cedarburg Road 60 W, Mequon, Wisconsin. Send comments to The Honorable Constance A. Pukaite, Mayor, City of Mequon, City Hall, 11333 North Cedarburg Road 60W, Mequon, Wisconsin 53092.					
Wisconsin	Unincorporated Areas of Ozaukee County.	North Branch Milwaukee River	At confluence with Milwaukee River	*799	*797
			At western county boundary	*801	*798
			About 3.0 miles downstream of Jay Road	None	*808
			At western county boundary	None	*808
		Milwaukee River	At City of Mequon corporate limits	*670	*671
			At western county boundary	*839	*835
		Cedar Creek	At mouth	*680	*680
			About 400 feet downstream of Wire and Nail Factory Dam.	*745	*743
			Just upstream of Wire and Nail Factory Dam	*761	*762
			At county boundary	*838	*838
		Lake Michigan	Along shoreline	*588	*599
		Mole Creek	At mouth	None	*745
			Just upstream of Maple Road	None	*780
		Sauk Creek	At mouth	None	*590
			Just upstream of Interstate 43	None	*694
Maps available for inspection at the Zoning Office, County Courthouse, 121 West Main, Port Washington, Wisconsin. Send comments to The Honorable James Swan, Chairman, County Board, Ozaukee County, County Courthouse, 121 West Main, Port Washington, Wisconsin 53074.					
Wisconsin	City of Port Washington, Ozaukee County.	Sucker Brook	At mouth	*586	*590
			Just downstream of Hales Trail	*644	*644

Proposed Modified Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Hales Trail.....	*661	*661
			Just downstream of Norport Drive.....	*672	*672
			Just upstream of Norport Drive.....	*678	*678
			About 0.54 mile upstream of Norport Drive.....	*690	*690
		Sauk Creek Tributary.....	At mouth.....	*589	*590
			Just downstream of West Oakland Avenue.....	*614	*614
			Just upstream of West Oakland Avenue.....	*618	*618
			Just downstream of abandoned dam.....	*636	*636
			Just upstream of abandoned dam.....	*643	*643
			Just downstream of South Park Street.....	*657	*657
			Just upstream of South Park Street.....	*664	*664
			Just downstream of Sunset Road.....	*688	*698
			Along shoreline.....	*584	*590
			At mouth.....	None	*590
		Lake Michigan.....	Just downstream of County Highway LL.....	None	*692
			About 100 feet upstream of Interstate 43.....	None	*692
		Sauk Creek.....			

Maps available for inspection at the City Hall, Port Washington, Wisconsin.

Send comments to The Honorable Ambrose Mayer, Mayor, City of Port Washington, City Hall, P.O. Box 179, Port Washington, Wisconsin 53074

Wisconsin.....	Village of Saukville, Ozaukee County.	Milwaukee River.....	At corporate limits.....	*753	*753
			At corporate limits.....	*758	*758
		Unnamed.....	At mouth.....	*757	*757
		Tributary No. 1.....	At corporate limits.....	*768	*768

Maps available for inspection at the Village Hall, 639 East Green Bay Avenue, Saukville, Wisconsin.

Send comments to The Honorable Jeff Knight, President, Village of Saukville, Village Hall, 639 East Green Bay Avenue, Saukville, Wisconsin 53080.

Wisconsin.....	Village of Thiensville, Ozaukee County.	Milwaukee River.....	Just downstream of Division Street.....	*659	*659
			At corporate limits.....	*663	*662

Maps available for inspection at the Village Hall, 250 Elm Street, Thiensville, Wisconsin.

Send comments to The Honorable John V. Kitzke, President, Village of Thiensville, Village Hall, 250 Elm Street, Thiensville, Wisconsin 53080.

Issued: June 7, 1990.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 90-13830 Filed 6-15-90; 8:45 am.]

BILLING CODE 6718-03-M

Notices

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Arboretum Advisory Council Intent To Reestablish an Advisory Council

Notice is hereby given that the Secretary of Agriculture intends to reestablish the National Arboretum Advisory Council. The purpose of the Council will be to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations and other sectors of U.S. agriculture. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191-194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council will meet annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, program development, and long-range goals. The Council's findings will be reported in writing to the Secretary of Agriculture.

It has been determined that the reestablishment of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Dr. Howard J. Brooks, National Program Staff, Agricultural Research Service, USDA, Building 005, BARC-W, Beltsville, Maryland 20705, by July 3, 1990.

Done at Washington, DC this 12th day of June 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90-14024 Filed 6-15-90; 8:45 am]

BILLING CODE 3410-03-M

Animal and Plant Health Inspection Service

[Docket No. 90-099]

Animal Damage Control Program Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental impact statement for the Animal Damage Control program. The draft environmental impact statement evaluates environmental impacts associated with wildlife damage control activities. We are requesting public comment on the draft environmental impact statement, and we are giving notice that public meetings will be held to further promote public involvement in the development of the final environmental impact statement.

DATES: Consideration will be given only to comments received on or before August 31, 1990. The public meetings will be held in Sacramento, California, on August 6, 1990; Kansas City, Missouri, on August 8, 1990; and in Washington, DC, on August 10, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Gary E. Larson, Director, Operational Support Staff, ADC, APHIS, USDA, room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-099. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The draft environmental impact statement may also be reviewed at this address. A copy of the draft environmental impact statement may be obtained by writing to Gary E. Larson at the address listed below under "FOR FURTHER INFORMATION CONTACT."

The public meetings will be held at the following locations: (1) Sierra Mariposa room, Holiday Inn-North East, 5321 Date Avenue, Sacramento, California, on August 6, 1990; (2) Ashley Hall, Holiday Inn-Airport, 11832 Plaza Circle, Kansas City, Missouri, on August 8, 1990; and (3) USDA, Jefferson

Auditorium, South Building, 14th Street and Independence Avenue SW., Washington, DC, on August 10, 1990.

FOR FURTHER INFORMATION CONTACT:

Gary E. Larson, Director, Operational Support Staff, ADC, APHIS, USDA, room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: We have prepared a draft environmental impact statement (DEIS) for the Animal Damage Control (ADC) Program. The DEIS evaluates environmental impacts associated with wildlife damage control activities.

We are requesting written comments on the DEIS, and we are advising that we will hold meetings to allow public involvement in the development of the final environmental impact statement for the ADC program. Comments at the meetings and comments by mail are invited from the public, from Federal, State, and local agencies that have an interest in the Animal and Plant Health Inspection Service (APHIS) or related programs, and from Federal and State agencies that have either jurisdiction by law or expertise regarding any national program issue or environmental impact that should be discussed in our final environmental impact statement. Comments are most helpful if they identify a specific concern or issue and provide a potential solution. The information source should be referenced if possible.

Public Meeting Procedures

An APHIS representative will preside at the meetings, where comments will be heard concerning any issue that would be relevant in the development of the final environmental impact statement. Interested persons may appear and be heard in person, by attorney, or other representative. Each meeting will begin at 10 a.m. and end at 5 p.m., local time; however, the meetings may end earlier if all persons desiring to speak have been heard. Persons who wish to speak should register at the desk located at the meeting entrance. Pre-meeting registration will be conducted at each meeting location from 9:30 a.m. to 10 a.m. on the meeting date. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons

have been heard. Since the time for each speaker may be limited, speakers are encouraged to submit written comments and to summarize these comments at the public meetings.

Background

The Federal Government's involvement in wildlife damage control began in the late 1800's. In 1985, Congress transferred the ADC program from the United States Fish and Wildlife Service to APHIS. In preparing to assume management of this program, APHIS adopted, in 1988, the final ADC environmental impact statement (51 FR 6290, Docket Number 86-402) that had been prepared by the United States Fish and Wildlife Service in 1979.

In accordance with APHIS and USDA regulations and guidelines, we periodically review and evaluate each APHIS environmental impact statement. On November 16, 1987, we gave notice (52 FR 43778-43779, Docket Number 87-151) of our intent to prepare a new environmental impact statement for the ADC program. To ensure public involvement in this project, we requested written comments and held a number of scoping meetings. Following this information-gathering process we developed in DEIS, which is available for public review. We are now soliciting additional public input on the DEIS before finalizing it.

Alternatives

We identified 11 alternatives for the ADC program, and these are discussed in our DEIS. Three of these alternatives—the No Action Alternative, the Compensation Alternative, and the Current Program Alternative—were selected for detailed analysis because they have environmentally distinct impacts. The analysis for these three alternatives covers the full range of impacts that would be expected to result under all 11 alternatives.

Under the No Action Alternative, APHIS would conduct no wildlife damage control. Under the Compensation Alternative, APHIS would fully or partially compensate for wildlife damage to agricultural resources. Compensation would not be provided for damage to nonagricultural resources.

Under the Current Program Alternative, integrated pest management would be used to reduce wildlife damage. Integrated pest management, as currently used or recommended by the ADC program, includes the integration and application of practical methods of prevention and control to reduce wildlife damage. This approach may incorporate cultural practices, habitat

modifications, animal behavior management, local reduction of animal populations, or a combination of these methods.

Our DEIS identifies the Current Program Alternative as the preferred alternative.

Major Issues

The DEIS explores a number of major issues, including the impacts of each alternative on the biological, economic, sociocultural, and physical environments.

The biological environment is analyzed in terms of the wildlife species affected by ADC program activities. The economic environment is analyzed in terms of the value of production related to major crops and livestock protected by the ADC program, and the value of losses attributable to wildlife damage to these resources. The sociocultural environment is analyzed in terms of major groups within American society that hold values or attitudes potentially impacted by ADC program activities. These groups include animal rights and animal welfare organizations, recipients of ADC services, and the general public. The physical environment is analyzed in terms of the impact of ADC program activities on air, water, soil, and human health.

Preparation of the Final Environmental Impact Statement

We will consider all comments received from reviewers of the DEIS for the ADC program. Following the comment period and the public meetings, any necessary revisions will be made to the DEIS and a final environmental impact statement will be prepared. A notice announcing the availability of the final environmental impact statement will be published in a subsequent Federal Register notice.

Done in Washington, DC, this 12th day of June 1990.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 90-14025 Filed 6-15-90; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Oglethorpe Power Corp.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500-1506), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare a Draft Environmental Impact Statement (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Oglethorpe Power Corporation of Tucker, Georgia, to construct a 230 kV transmission line project. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Oglethorpe Power Corporation and other parties that would result in construction of the project. Notice is also given of a public scoping meeting to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, Room Number 0270, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250-1500, telephone number (202) 382-8436. For information on specific aspects of Oglethorpe Power Corporation's proposal contact Mr. Chuck Wilson, Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia, 30085-1349, telephone number (404) 270-7600.

SUPPLEMENTARY INFORMATION: Oglethorpe Power Corporation tentatively proposes to construct approximately 25 miles of 230 kV transmission line. The line would begin at the existing 230/25 kV Wilsonville Substation in Coffee County, Georgia, just north of the intersection of State Routes 158 and 64 and traverse in a southeasterly direction to the proposed 230/115 kV Kettle Creek Substation to be located west of Waycross in Ware County, Georgia. A portion of the transmission line may traverse Atkinson County, Georgia. The project will necessitate modifications to the Wilsonville Substation.

Alternatives to be considered by REA and Oglethorpe include: (a) No action, (b) construct the project as proposed and (c) upgrade the existing Douglas

and Offerman substations and reconductor 65 miles of 115 kV transmission line and install new capacitor banks at various distribution substations in the Waycross area.

A public scoping meeting related to REA's environmental review of the project will be held at the Regency Room of the Holiday Inn, 1725 Memorial Drive, Waycross, Georgia, at 7 p.m. on Thursday, July 19, 1990.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the July 19 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Georgia, or local agencies may conduct.

To be presented at the meeting will be a macro-corridor study and an evaluation of alternatives prepared by Oglethorpe Power Corporation reviewed and accepted by REA as adequate scoping documents. The macro-corridor study and evaluation of alternatives are available for public review at REA or Oglethorpe Power Corporation at the addresses provided herein. They can also be reviewed at the following libraries:

Pearson Public Library, Bullard Avenue, Pearson, Georgia, Phone (912) 422-3500

Satilla Regional Library, 701 E. Ward Street, Douglas, Georgia, Phone (912) 384-4667

Waycross-Ware County Library, 401 Lee Street, Waycross, Georgia, Phone (912) 283-3126.

From information provided in the macro-corridor study the evaluation of alternatives, input from local, State of Georgia and Federal agencies and the public, Oglethorpe Power Corporation will prepare an Environmental Analysis to be submitted to REA for review. Upon review of the Environmental Analysis and other input, REA at this point may decide to directly begin preparation of a DEIS. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an Environmental Assessment to determine if the preparation of an

Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures as applicable.

Dated: June 12, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90-14026 Filed 6-15-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held July 10, 1990, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export control applicable to computer peripherals, components and related test equipment or technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or

portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: June 12, 1990.

Betty A. Ferrell,

Director, Technical Advisory, Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-14072 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DT-M

Export Administration

[Docket Nos. 9101-01, OEE-1-90.01, OEE-1-90.02]

Action Affecting Export Privileges: Franciscus Govaerts Individually and Doing Business as Printlas Europa

In the Matter of: Franciscus Govaerts individually and doing business as Printlas Europa, Appellant

Summary

On June 4, 1990, the ALJ issued a Recommended Decision and Order granting the appeal from the second renewal of a temporary denial order and vacating the temporary denial order effective June 20, 1990. In his Recommended Decision and Order, the ALJ failed to address whether there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the Export Administration Act or Regulations. For this reason, I hereby vacate the ALJ's Recommended Decision and Order and remand the matter to the ALJ for further review consistent with this Decision and Order.

Background

On April 6, 1989, the Assistant Secretary for Export Enforcement ("Assistant Secretary") signed an order temporarily denying all of the export privileges of Roger Van Alphen; Franciscus Govaerts ("Govaerts"), individually and doing business as Printlas Europa; Goris Christiann Grandia, individually and doing business as Grandia Project Services; and Marcel Sanders ("Sanders"), individually and doing business as Belgium Trading Company Lokeren S.A. 54 FR 14667 (1989). On September 14, 1989, the Office of Export Enforcement ("the Department") filed a request for

the renewal of the temporary denial order ("TDO") against all of the above parties. On September 20, 1989, Govaerts opposed the renewal of the TDO as it pertained to him. Despite Govaerts' objections, the Assistant Secretary renewed the TDO on October 4, 1989. On November 3, 1989, Govaert appealed the Assistant Secretary's decision to renew the TDO. Subsequently, on November 22, 1989, the Administrative Law Judge recommended that Govaert's appeal be denied. The Under Secretary affirmed the ALJ's recommended decision.

On March 13, 1990, the Department filed a second request for renewal of the TDO against all of the parties, advising that there was still a reason to believe that a TDO is necessary in the public interest to prevent an imminent violation of the Export Administration Act¹ and Regulations.² In support of its request, the Department incorporated the allegations and evidence furnished in the original TDO request and the first renewal into the record for this proceeding and reported the events that transpired since the first renewal of the TDO in October 1989. Subsequently, on April 2, 1990, the Assistant Secretary renewed the TDO a second time for an additional 180 days.

On May 18, 1990, Govaerts filed an appeal of the second renewal of the TDO claiming that several mitigating factors preclude the continued denial of his export privileges. For example, Govaerts claims that the U.S. Customs Service conspired with a company to tempt him into violating the Regulations and that he entered into a plea bargain in the criminal proceeding because he knew that such a defense would be difficult to prove. As part of the plea bargain, Govaerts claims that he cooperated with U.S. Customs to get other co-conspirators arrested in return for a sentence for time served. Govaerts alleges that during his incarceration, Sanders, one of the co-conspirators, attempted to bribe Govaerts into refusing to testify against him. As evidence of such bribery, Govaerts furnished a copy of an indictment issued by the United States District Court for the District of Massachusetts which charged Sanders with attempted bribery and obstruction of justice.³ Having

served four months in a U.S. prison, Govaerts claims that upon his return to Holland, Sanders attempted to throw him out of a hotel window and threatened to kill him and his family and that only after paying Sanders all of the money that he had did Sanders let him off the hook. Govaerts challenges the Department's allegation that Sanders has \$8,000,000 to dedicate to acquiring additional equipment but acknowledges that Sanders could obtain such sums of money from another Belgian under certain strict conditions. Finally, Govaerts has vowed never to make the same mistake again.

On May 30, 1990, the Department furnished its reply to Govaerts' appeal of the second renewal of the TDO. The Department argues that the TDO in this matter "was and is still required in the public interest to prevent an imminent violation of the Export Administration Act or Regulations." In requesting the original TDO and its renewal, the Department furnished a full description of a scheme involving all of the above-named parties whereby they attempted to export high-technology equipment through the Netherlands to Bulgaria, absent the required export license. In support of Govaerts' involvement, the Department furnished an affidavit of a U.S. Customs Service special agent. The affidavit states that Govaerts (1) ordered the equipment; (2) packed the equipment in such a way to disguise its control status; (3) declared general license status on the shipper's export declaration form; (4) intended to reexport the items to Bulgaria by bribing Belgian Customs officials, if necessary; (5) was involved in the export of "wire bonders" from the Netherlands without the required export license, was fined, and viewed the fine as "peanuts"; and (6) was arrested by the U.S. Customs Service for his role in the actions which underlie this proceeding.

In its reply, the Department reiterates its concerns that Govaerts, Sanders, and Van Alphen are at liberty in Western Europe and that, absent continued denial, would be free to purchase and participate in the export of additional equipment to Bulgaria. Further, the past activities of Govaerts indicate deliberate and covert violations of the Act and Regulations and a pattern of disregard for same.

On June 4, 1990, the ALJ recommended that the appeal be granted and that the TDO be vacated effective June 20, 1990, unless a charging letter is issued before that date. While acknowledging that many of Govaerts' objections may be foreclosed by his criminal conviction, the ALJ finds that "the information

regarding Govaerts' refusal of Sanders' bribe is but one example that continuous debarment without opportunity for a fair hearing "constitutes agency abuse of the TDO process." See ALJ Recommended Decision at 2. Further, the ALJ notes that counsel has failed to provide substantial excuse or reason for the delay in bringing charges and that there is an apparent prejudice to appellants with respect to the sanctions that ultimately will be imposed as a result of the lengthy proceeding. *Id.* at 4.

Discussion

The Act and Regulations require that a TDO should be imposed and renewed only if there is reason to believe that the order is required in the public interest to prevent an imminent violation of the Act, any regulation, order, or license issued under the Act. See EAA section 13(d); EAR 15 CFR 788.19. In fact, the Regulations caution that "[T]he only issue to be considered on the Department's request for renewal is whether the temporary denial order should be continued to prevent an imminent⁴ violation as defined herein." See 15 CFR 788.19 (d)(2) and (e)(5).

In his recommended decision during the appeal of the first renewal of the subject TDO, the ALJ affirmed the renewal of the TDO for several reasons: (1) The evidence submitted reflected a reasonable possibility that appellants engaged in efforts to export controlled equipment unlawfully from the U.S. to Bulgaria; (2) the record reflected that appellants may have had the means to continue such efforts; (3) appellants failed to overcome the necessary showing that a finding of an imminent violation was unsupported; and (2) there was reason to believe that the TDO was required in the public interest to prevent an imminent violation of the Act and Regulations. See Recommended Decision, dated November 22, 1989, at 3-4.

Now, during the appeal of the second renewal of the same underlying TDO, the ALJ has reversed his recommendations from seven months ago without ever reaching the issue of whether there is a possibility of

⁴ The ALJ apparently has overlooked the fact that the Regulations do provide for a hearing by the Assistant Secretary with respect to the renewal application if the respondent so desires. See 15 CFR 788.19(d)(2). In this case, Govaerts did not request a hearing on the second renewal.

⁵ "Imminent" violation is described in terms of time or degree of likelihood. With respect to likelihood, the Department may show that the violations currently under investigation were significant, deliberate, covert and/or likely to occur again as opposed to technical or negligent violations.

¹ 50 U.S.C.A. app. 2401-2420 (Supp. 1989) ("the Act").

² 15 CFR 768-799 (1989) ("the Regulations").

³ The Department reported in its March 13, 1990, request for second renewal of the temporary denial order that these charges were dismissed and the details of such offenses were taken into consideration in the final sentencing of Sanders on the original export violation.

imminent violation, the only issue to be considered in a request for renewal of a TDO. Rather, the ALJ used this case to launch an attack on agency counsel for allegedly abusing the TDO process by failing to provide substantial excuses or reasons for the delays in this case.

After reviewing the Act and Regulations and the record in this case, I find that there is no support for the ALJ's substitution of his judgment for agency counsel's in determining the optimal time to issue a charging letter. Barring a situation where there is no imminent violation, the current Act and Regulations leave that discretion solely with the Department.

In view of the above, the ALJ's Recommended Decision and Order of June 4, 1990, is hereby vacated and the matter is remanded to the ALJ for further consideration. The ALJ shall have thirty (30) days within which to submit an Order to the Office of the Under Secretary addressing the issue as to whether the TDO should be continued to prevent an imminent violation, as described in the Act and Regulations.

Dated: June 11, 1990.

Dennis E. Kloske,

Under Secretary for Export Administration.

Appearance for Respondent: Franciscus Govaerts, Printlas Europa, Torenakker 8—5731 CC, Mierlo, Holland.

Appearance for Agency: Pleasant Broadnax, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Avenue, NW., Washington, DC 20230.

Background

This is an appeal from the second renewal of a Temporary Denial Order against Appellants, dated April 2, 1990, 55 FR 14430 (1990). The first renewal was dated October 4, 1989, 54 FR 41660 (1989). The original *ex parte* denial order was issued on April 6, 1989, 54 FR 14667 (1989). That Order denied U.S. Export Privileges to these and a number of other parties. It was issued by the Assistant Secretary for Export Enforcement pursuant to authority delegated under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420) and the implementing regulations 15 CFR parts 768-799.

A Petition to Vacate the renewal order was filed on behalf of Appellants by a letter dated May 8, 1990 which was delivered to this office on May 18, 1990.

Appellant Govaerts raises many of the same objections previously asserted, which may be foreclosed by his criminal conviction. That conviction appears to be based on charges relating to the same export transactions that are involved

here. He makes an urgent plea respecting the extent of the sanctions, which cannot be examined in this expedited process. The information respecting his refusal of a very large attempted bribe to prevent his testifying against another individual is but one example of indications that continuous debarment without opportunity to have a fair hearing constitutes Agency abuse of the temporary denial process. In approving the last extension I said in part:

Though the record reflects a grievous criminal violation, it is devoid of a substantial showing respecting why this extraordinary remedy needs to be extended. Government agents were present and observed the violations when they occurred through December 1988. The Appellant Govaerts entered a guilty plea to criminal charges in June 1989 and was sentenced on August 17, 1989. Others in the group were similarly identified and action initiated. On the face of the presentation there has been more than adequate opportunity to issue a charging letter. In these short turnaround appeals there is not time to address what may be valid concerns about the degree of culpability and appropriate sanction. The extensive compilation of materials presented here would appear to be more than sufficient to initiate the charging letter proceeding. It is noted that both in the initial and the renewal request Agency Counsel has indicated that a charging letter would be forthcoming. With Temporary Denial Orders remaining outstanding for in excess of seven years, this agency has a poor record on these matters. Congress' recent action in extending the time for such issuances and renewals will be jeopardized if they are not closely monitored. Agency Counsel should certainly make a clear showing of why charges have not been filed and when they will be. Order of November 22, 1989.

In the request for Agency Counsel's comments on May 21, 1990 he was directed to address the above concerns and to show cause how the recommendation should address them. He has completely failed to do so. The fact that another attorney left the General Counsel's office some months ago pales to insignificance when the history of these allegations is reviewed. For not only does it appear that federal agents were present and observed the violations in 1988, it is also represented that a criminal conviction or a plea of guilty was obtained in mid-1989. Under the so-called *Spawr* rule such a criminal conviction may entitle the Agency to a summary adjudication. It should also be noted that the current extension has been in effect for almost two months, and still there is no charging letter. No substantial excuse or reason for the delay in bringing charges has been forthcoming from the Office of Counsel.¹

¹ Prejudice affecting Appellants with respect to sanctions ultimately imposed also appears to exist by virtue of the lengthy existence of Temporary Denial Orders. In justifying the use of such unusual action, the Agency then appears to develop a

Summary denial of export privileges is an extraordinary and extreme course of action not permitted in most administrative adjudications. See *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Nichiro Gvoavo Kaisa, Ltd., et al v. Baldrige USDC*, Civ. 84-0012 (D.D.C. Nov. 7, 1984). The extraordinary authority which Congress has granted in the Export Administration Act should not be abused. To continuously extend such sanctions without a convincing showing of necessity is unjustified. There are lesser remedies, including less than complete denial, available. The representations of Agency Counsel are strong but they do not constitute proof. The Agency is obliged to sustain its burden of proof with respect to both the violations and the appropriate sanctions. The extremely short statutory period allowed for consideration of these appeals forecloses complete submissions, particularly from foreign sources. They are no substitute for a full adjudication nor are they meant to be.

This continued extension of the Temporary Denial Order, absent the issuance of a charging letter constitutes an abuse of that extraordinary remedy.²

It is recommended that the appeal be granted and the Temporary Denial Order vacated effective June 20, 1990 unless a charging letter is issued before that date. In that event the Temporary Denial Order will remain in effect and this appeal will be denied.

Dated: June 4, 1990.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 90-13976 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

University of Nebraska, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S.

hardened attitude respecting the sanctions against such persons—a not unexpected result.

² I am not unaware of the apparent fruitlessness of this recommendation. The Under Secretary no longer relies upon his own staff for advice on these matters but looks to the General Counsel's office for counsel.

Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-203. *Applicant:* University of Nebraska, Lincoln, NE 68688-0304. *Instrument:* Fluorescence Lifetime Spectrometer, Model 199T. *Manufacturer:* Edinburgh Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 34540, August 21, 1989. *Reasons:* The foreign instrument provides: (1) Time-resolved lifetimes into the picosecond range, (2) three multiplexed photon detection channels and (3) simultaneous acquisition fluorescence and excitation. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

Docket Number: 89-206. *Applicant:* Shriners Hospitals for Crippled Children, Galveston, TX 77550. *Intended Use:* See notice at 54 FR 38423, September 18, 1989.

Docket Number: 89-230. *Applicant:* Washington University School of Medicine, St. Louis, MO 63110. *Intended Use:* See notice at 54 FR 41322, October 6, 1989.

Instrument: Gas Isotope Ratio Mass Spectrometer, Model SIRA Series II. *Manufacturer:* VG Instruments, United Kingdom. *Reasons:* The foreign instrument provides (1) An external precision of 0.04°/00 for CO₂, (2) an auto (cold finger) micro-inlet for sample volumes as low as 3 bar µl and (3) computer-controlled analysis of 20 ml evacuated tubes. *Advice Submitted by:* National Institutes of Health, March 19, 1990.

Docket Number: 89-216. *Applicant:* U.S. Department of Agriculture, Urbana, IL 61801.

Docket Number: 89-218. *Applicant:* Duke University, Durham, NC 27706.

Instrument: Chlorophyll Fluorometer System, Model PAM 101. *Manufacturer:* Heinz Walz, East Germany. *Intended Use:* See notices at 54 FR 40158-40159, September 29, 1989. *Reasons:* The foreign instruments uses a pulse modulated source to provide in situ measures of chlorophyll fluorescence that are independent of ambient light intensity. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

Docket Number: 89-219. *Applicant:* University of Maine, Orono, ME 04469. *Instrument:* Calorespirometer. *Manufacturer:* Niroblitz GmbH, Austria.

Intended Use: See notices at 54 FR 40159, September 29, 1989. *Reasons:* The foreign instrument can simultaneously measure heat dissipation to 0.15 µW and oxygen flux to 10 nanomole. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

Docket Number: 89-220. *Applicant:* Presbyterian Medical Center, Philadelphia, PA 19104. *Instrument:* Micromanipulator. *Manufacturer:* De Marco Engineering, Switzerland. *Intended Use:* See notices at 54 FR 40159, September 29, 1989. *Reasons:* The foreign instrument is specially designed to insert oxygen-sensitive microelectrodes into the eyes of anesthetized animals to study retinal circulation. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

Docket Number: 89-226. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Whole Seedling Porometer, Model CS-102. *Manufacturer:* Micromet Systems, Canada. *Intended Use:* See notices at 54 FR 41322, October 6, 1989. *Reasons:* The foreign instrument provides in situ, non-destructive measurement of stomatal conductance and whole-seedling transpiration of water with a 60-s measurement time. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

Docket Number: 89-239. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Cryogenic Radiometer. *Manufacturer:* NPL, United Kingdom. *Intended Use:* See notices at 54 FR 47253, November 13, 1989. *Reasons:* The foreign instrument provides: (1) Capability for laser radiation, (2) superior accuracy and (3) an uncertainty of 0.4 parts in 10⁴. *Advice Submitted by:* National Institutes of Health, April 19, 1990.

The National Institutes of Health advises that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Croel,

Director, Statutory Import Programs Staff.
[FR Doc. 90-14015 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DS-M

University of Texas, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 90-027. *Applicant:* University of Texas, Southwestern Medical Center, Dallas, TX 75235-9072. *Instrument:* Electron Microscope, Model JEM-1200/SEG. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 55 FR 9346, March 13, 1990. *Order Date:* December 28, 1989.

Docket Number: 90-032. *Applicant:* Emory University Hospital, Atlanta, GA 30322. *Instrument:* Electron Microscope, Model EM-900. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 9347, March 13, 1990. *Order Date:* November 29, 1989.

Docket Number: 90-035. *Applicant:* University of California, Davis, Bodega Bay, CA 94923. *Instrument:* Electron Microscope, Model EM-902/PC/ST/G45. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 9347, March 13, 1990. *Order Date:* January 25, 1989.

Docket Number: 90-038. *Applicant:* Regents of the University of California, San Diego, La Jolla, CA 92093. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 10461, March 21, 1990. *Order Date:* November 26, 1989.

Docket Number: 90-039. *Applicant:* California State University, Long Beach, CA 90840. *Instrument:* Electron Microscope, Model JEM-1200EXII. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 10461, March 21, 1990. *Order Date:* September 18, 1989.

Docket Number: 90-044. *Applicant:* Baylor College of Medicine, Houston, TX 77030. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 14335, April 17, 1990. *Order Date:* September 30, 1989.

Docket Number: 90-049. *Applicant:* Union College, Schenectady, NY 12308.

Instrument: Electron Microscope, Model JEM-100CXII. **Manufacturer:** JEOL Ltd., Japan. **Intended Use:** See notice at 55 FR 14335, April 17, 1990. **Order Date:** November 1, 1989.

Docket Number: 89-213. **Applicant:** University of Alabama, Tuscaloosa, AL 35487. **Instrument:** Electron Microscope, Model H-8000. **Manufacturer:** Hitachi, Japan. **Intended Use:** See notice at 55 FR 38543, September 19, 1989. **Order Date:** March 29, 1989.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-14016 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Except as noted below, the Mid-Atlantic Council, its Squid, Mackerel, and Butterfish Committee, and its Habitat Committee will hold public meetings on June 26-28, 1990, at the Holiday Inn, 45 Industrial Boulevard, Essington, PA; telephone: 215-521-2400.

The Squid, Mackerel, and Butterfish Committee will meet on June 26 to discuss recommendations for 1991 allocations. The meeting will begin at 8:30 a.m. and will adjourn at 11:30 a.m.

The Habitat Committee will meet on June 27 at 2:45 p.m., to discuss the section 404 permit reviews. Other agenda items may include preparation for a fact-finding meeting, an update on the beach nourishment project, and follow-through on concern for surf clams in the area of sand dredging.

On June 27 the Mid-Atlantic Council will begin its regular public meeting from 8:30 a.m. to 2:30 p.m.

On June 28 the Council will reconvene its public meeting at 8 a.m., and adjourn at approximately noon. The Council is scheduled to adopt the allocations for Atlantic mackerel, *Loligo Squid*, *Illex Squid*, and butterfish for 1991, and discuss other fishery management and administrative matters. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: June 12, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-13980 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), Advisory Panel (AP), and other advisory groups will meet on June 25-30, 1990, at the Hilton Hotel in Anchorage, AK. The meetings are open to the public, with the exception of the Council's executive session scheduled for June 26 to discuss personnel matters, ongoing litigation and international affairs.

The Council will begin its meeting on June 25 at 9 a.m. The following are the Council's agenda items:

1. Reports by the Alaska Department of Fish and Game, the National Marine Fisheries Service (NMFS), and the U.S. Coast Guard. The Council also will hear reports on current legislation, marine mammals, and international fisheries, possibly including foreign permit applications.

2. Review of the 1990 domestic observer program and consideration of changes for 1991.

3. Consideration of the schedule for and ongoing analysis of inshore/offshore allocations.

4. Review of overfishing definitions for the Salmon and Crab Fishery Management Plans (FMPs).

5. Consideration of the final approval of a limited access system for the sablefish fisheries off Alaska, and new schedules for limited access for the halibut, groundfish, and crab fisheries. Consideration of the design of alternative access systems for halibut.

6. Consideration of an emergency action to exempt pot gear in the Gulf of Alaska from the halibut bycatch closure.

7. Consideration of final approval of an amendment to prohibit pollock roe-stripping and seasonally apportion pollock in the Gulf of Alaska and Bering Sea/Aleutian Islands.

8. Review of a draft notice of a moratorium on entry to all fisheries under Council jurisdiction.

9. Consideration of final approval of proposed amendments to the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fishery Management Plans (FMPs).

10. Consideration of regulatory amendments to delay in 1991 the yellowfin sole/other flatfish fishery opening date, and to allow for higher retention of yellowfin sole and other flatfish in the directed rock sole fisheries.

11. Review of two bycatch amendments dealing with herring, crab, and halibut bycatch in the Bering Sea/Aleutian Islands.

12. Consideration of emergency action to provide corridors for migration and protection of herring during the winter months.

13. Review of a proposal to allocate groundfish resources to residents of the Pribilof Islands.

Other meetings will include the Council's AP and SSC, which will begin their meetings on June 25 at 10:30 a.m., also at the Hilton Hotel. Other workgroup and committee meetings also may be held on short notice during the meeting week.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: June 12, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-13981 Filed 06-15-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 11, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs sort or call (202) 343-6581. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as the consultation period for Category 669-P expired on May 27, 1990, the United States Government has decided to control imports in this category for the period February 27, 1990 through February 26, 1991, regardless of the date of export.

The United States remains committed to finding a solution concerning Category 669-P. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 49333, published on November 30, 1989; and 55 FR 12402, published on April 3, 1990.

Dated: June 12, 1990.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 1, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1988; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 18, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in

Category 669-P,¹ produced or manufactured in Thailand and entered, regardless of the date of export, during the twelve-month period beginning on February 27, 1990 and extending through February 26, 1991, in excess of 1,255,407 kilograms.²

You are directed to amend the 1990 counting period for Category 669 to end on February 26, 1990.

Textile products in Category 669-P which have been entered, regardless of the date of export, into the United States prior to February 27, 1990 shall not be subject to this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 90-13975 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comments on Bilateral Textile Consultations With the Government of the Philippines

June 12, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 19, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 31, 1990, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of

the United States and the Philippines, the Government of the United States requested consultations with the Government of the Philippines with respect to silk blend and other non-cotton vegetable fiber trousers, breeches and shorts in Category 847.

The purpose of this notice is to advise that pending agreement on a mutually satisfactory solution concerning Category 847, the Government of the United States has decided to control imports during the ninety-day consultation period which began on May 31, 1990 and extends through August 28, 1990.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 847, produced or manufactured in the Philippines and exported during the prorated period beginning on August 29, 1990 and extending through December 31, 1990, of not less than 191,713 dozen.

A summary market statement concerning Category 847 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 847, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultants is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning

¹ Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

² The limit has not been adjusted to account for any imports entered after February 26, 1990.

Category 847. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 54 FR 50797, published on December 11, 1989).

Dated: June 12, 1990.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

MARKET STATEMENT

Men's and Boys' and Women's and Girls' Silk-Blend and Non-Cotton Vegetable Fiber Trousers,

Slacks and Shorts—Category 847
Philippines, May 1990.

Import Situation and Conclusion

U.S. imports of vegetable fiber other than cotton and silk-blend trousers, slacks and shorts (Category 847) from the Philippines reached 493,115 dozen in the year ending March 1990, double the 246,365 dozen imported during the same period of 1989. In the first three months of 1990 imports of Category 847 from the Philippines reached 265,380 dozen, more than twice the 124,198 dozen imported during the corresponding period in 1989. Imports from the Philippines in 1989 reached 351,933 dozen, more than double the 150,230 dozen imported during 1988.

The imports of trousers, slacks and shorts in Category 847 are of silk-blend and non-cotton vegetable fiber and compete directly with domestically produced cotton and man-made fiber trousers, slacks and shorts (Category 347/348/647/648). The U.S. market for cotton and man-made fiber trousers, slacks and shorts (Category 347/348/647/648) is being disrupted by imports. The sharp and substantial increase in Category 847 imports from the Philippines is causing a real risk of disruption in the U.S. market for cotton and man-made fiber trousers, slacks and shorts.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton and man-made fiber trousers, slacks and shorts (Category 347/348/647/648) has been on the decline since 1987, falling from 89,297,000 dozen in 1987 to an average level of 80,581,000 dozen during 1988–1989, a 10 percent drop. The ratio of imports to domestic production in Category 347/348/647/648 increased 76 percent in 1989, up 19 percentage points from 1987. The domestic manufacturers' share of the U.S. cotton and man-made fiber trousers, slacks and shorts market fell to 57 percent in 1989, down seven percentage points from 84 percent in 1987.

U.S. imports of silk-blend and non-cotton vegetable fiber trousers, slacks and shorts (Category 847) increased 84 percent from 1,861,278 dozen in 1988 to 3,054,647 dozen in

1989. When imports of the directly competitive Category 847 are included in the market analysis, the import to production ratio rises to 80 percent and the domestic manufacturers' share of this falls to 55 percent in 1989.

Duty-Paid Value and U.S. Producers' Price

Approximately 90 percent of Category 847 imports from the Philippines entered the U.S. in the first three months of 1989 under HTSUSA number: 6203.49.3060—men's and boys' silk-blend or non-cotton vegetable fiber woven short and 6204.89.9040—women's and girls' woven trousers, breeches and shorts of non-cotton vegetable fibers. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for directly competing cotton and man-made fiber garments.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 12, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 19, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other non-cotton vegetable fiber textile products in Category 847, produced or manufactured in the Philippines and exported during the ninety-day period which began on May 31, 1990 and extends through August 28, 1990, in excess of 163,276 dozen.¹

Textile products in Category 847 which have been exported to the United States on and after January 1, 1990 shall remain subject to the Group II limit established for the period January 1, 1990 through December 31, 1990.

Textile products in Category 847 which have been exported to the United States prior to May 31, 1990 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

¹ The limit has not been adjusted to account for any imports exported after May 30, 1990.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 90-14014 Filed 6-15-90; 8:45 am]
BILLING CODE 3510-DR-M

Rescission of a Request to Consult on Polyester Yarn Produced or Manufactured in Thailand

June 11, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the rescission of a request to consult.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to cancel the request to consult on imports of polyester yarn in Category 604-P. Should it become necessary to discuss this category with the Government of Thailand at a later date, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 5645, published on February 16, 1990.

Dated: June 12, 1990.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 90-13974 Filed 6-15-90; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The 1990 DoD Survey of Overseas Civilian Personnel and Dependents, no form, no OMB control number.

Type of Request: New; Expedited approval by July 2, 1990.

Average Burden Hours/Minutes Per Response: 0.0833.

Frequency of Response: One.

Number of Respondents: 50,000.

Annual Burden Hours: 4,165.

Annual Responses: 50,000.

Needs and Uses: The purpose of this survey is to count and to determine

stateside residence of DoD civilian personnel and their dependents assigned overseas. This information will be combined with similar information on military personnel and dependents and reported to the Bureau of the Census for apportionment purposes.

Affected Public: Federal employees.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk

Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: June 13, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

BILLING CODE 3810-01-M

OMB NO.
EXPIRES 10/31/90

1990 SURVEY OF DOD OVERSEAS CIVILIAN PERSONNEL AND DEPENDENTS

Public reporting burden for this collection of information is estimated to average .0833 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302 and to the Office of Management and Budget, Paperwork Reduction Project (0704-xxx), Washington DC 20503. Please DO NOT RETURN your questionnaire to either of these addresses. Send your completed questionnaire to: Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington VA 22209.

PRIVACY NOTICE

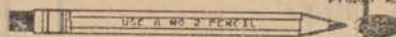
AUTHORITY: 10 USC 136

PRINCIPAL PURPOSE(S): To determine counts of DoD civilians and dependents assigned overseas. This information will be reported to the Bureau of the Census for state apportionment purposes.

ROUTINE USE(S): To the Department of Commerce, Bureau of the Census, for residency information on overseas DoD civilian personnel and their dependents.

DISCLOSURE: Voluntary. Failure to respond will not result in penalty to the respondent. However, maximum participation is encouraged so that data will be complete and representative.

**** MARKING Instructions ****



Use a No. 2 Pencil only.

Fill in the appropriate circles completely.

Please complete and return the survey within 2 weeks.

If you have any questions
about this survey CALL:

Defense Manpower Data Center
Survey Desk at: (202) 696-5863 or -5833
(Autovon 226-5863 or -5833)

For best response, please call between 0830 and 1700 hours Eastern Standard Time.

1990 Survey of
DoD Overseas Civilian Personnel and Dependents

ARE YOU ONE OF THE PEOPLE WE NEED INFORMATION FROM?

In selecting households for this survey we have attempted to accurately identify only DoD civilian personnel households who are currently stationed overseas and who are not a spouse or dependent of an active-duty military member household.

Were you married to an active-duty military member on March 31, 1990?

☐ Yes (STOP and return form in the enclosed Business Reply envelope).

A. Are you a citizen or resident alien of the United States?

- ☐ Yes
- ☐ No

B. Were you employed by the Department of Defense as a civilian at an overseas location on March 31, 1990?

- ☐ Yes
- ☐ No

If your answer to either questions A or B was NO, STOP and return this form in the enclosed Business Reply Envelope.

If your answer was yes to BOTH questions A and B, please continue.

C. Were both you and your spouse employed by the Department of Defense as civilians at an overseas location on March 31, 1990?

- ☐ No (Go to question 1)
- ☐ Not applicable, I am not married (Go to question 1)
- ☐ Yes (STOP, READ instructions below for DUAL-DOD CIVILIANS)

FOR DUAL-DOD CIVILIAN HOUSEHOLDS ONLY:

If both you and your spouse are employed by the Department and you have received a questionnaire addressed to each of you, the spouse with the LONGEST LENGTH OF SERVICE with the Department should be the one to finish this questionnaire. Please fill in the circle below:

- ☐ We are a dual-DoD civilian household and have completed and returned the required questionnaire for the person with the longest length of service.
- ☐ We are a dual-DoD civilian household and have already returned the required questionnaire. However, the person filling it out did not have the longest length of service.

Please finish completing only one questionnaire.

1990 Survey of
DoD Overseas Civilian Personnel and Dependents

1. How many dependents did you have on March 31, 1990 at your location? A dependent is anyone related to you by blood, marriage, or adoption who depends on you for more than half of their support. Do not include military members.

<input type="radio"/> None	<input type="radio"/> 6
<input type="radio"/> 1	<input type="radio"/> 7
<input type="radio"/> 2	<input type="radio"/> 8
<input type="radio"/> 3	<input type="radio"/> 9
<input type="radio"/> 4	<input type="radio"/> 10 or more
<input type="radio"/> 5	

2. What was the appropriate State for the following situations prior to going overseas?

a. RESIDENCE FOR LAST SIX MONTHS	a. RESIDENCE FOR LAST SIX MONTHS
b. STATE INCOME TAXES WITHHELD	b. STATE INCOME TAXES WITHHELD
c. RESIDENCE PRIOR TO BECOMING A CIVILIAN DOD EMPLOYEE	c. RESIDENCE PRIOR TO BECOMING A CIVILIAN DOD EMPLOYEE

<input type="radio"/> <input type="radio"/> <input type="radio"/> Alabama	<input type="radio"/> <input type="radio"/> <input type="radio"/> Montana
<input type="radio"/> <input type="radio"/> <input type="radio"/> Alaska	<input type="radio"/> <input type="radio"/> <input type="radio"/> Nebraska
<input type="radio"/> <input type="radio"/> <input type="radio"/> Arizona	<input type="radio"/> <input type="radio"/> <input type="radio"/> Nevada
<input type="radio"/> <input type="radio"/> <input type="radio"/> Arkansas	<input type="radio"/> <input type="radio"/> <input type="radio"/> New Hampshire
<input type="radio"/> <input type="radio"/> <input type="radio"/> California	<input type="radio"/> <input type="radio"/> <input type="radio"/> New Jersey
<input type="radio"/> <input type="radio"/> <input type="radio"/> Colorado	<input type="radio"/> <input type="radio"/> <input type="radio"/> New Mexico
<input type="radio"/> <input type="radio"/> <input type="radio"/> Connecticut	<input type="radio"/> <input type="radio"/> <input type="radio"/> New York
<input type="radio"/> <input type="radio"/> <input type="radio"/> Delaware	<input type="radio"/> <input type="radio"/> <input type="radio"/> North Carolina
<input type="radio"/> <input type="radio"/> <input type="radio"/> District of Columbia	<input type="radio"/> <input type="radio"/> <input type="radio"/> North Dakota
<input type="radio"/> <input type="radio"/> <input type="radio"/> Florida	<input type="radio"/> <input type="radio"/> <input type="radio"/> Ohio
<input type="radio"/> <input type="radio"/> <input type="radio"/> Georgia	<input type="radio"/> <input type="radio"/> <input type="radio"/> Oklahoma
<input type="radio"/> <input type="radio"/> <input type="radio"/> Hawaii	<input type="radio"/> <input type="radio"/> <input type="radio"/> Oregon
<input type="radio"/> <input type="radio"/> <input type="radio"/> Idaho	<input type="radio"/> <input type="radio"/> <input type="radio"/> Pennsylvania
<input type="radio"/> <input type="radio"/> <input type="radio"/> Illinois	<input type="radio"/> <input type="radio"/> <input type="radio"/> Rhode Island
<input type="radio"/> <input type="radio"/> <input type="radio"/> Indiana	<input type="radio"/> <input type="radio"/> <input type="radio"/> South Carolina
<input type="radio"/> <input type="radio"/> <input type="radio"/> Iowa	<input type="radio"/> <input type="radio"/> <input type="radio"/> South Dakota
<input type="radio"/> <input type="radio"/> <input type="radio"/> Kansas	<input type="radio"/> <input type="radio"/> <input type="radio"/> Tennessee
<input type="radio"/> <input type="radio"/> <input type="radio"/> Kentucky	<input type="radio"/> <input type="radio"/> <input type="radio"/> Texas
<input type="radio"/> <input type="radio"/> <input type="radio"/> Louisiana	<input type="radio"/> <input type="radio"/> <input type="radio"/> Utah
<input type="radio"/> <input type="radio"/> <input type="radio"/> Maine	<input type="radio"/> <input type="radio"/> <input type="radio"/> Vermont
<input type="radio"/> <input type="radio"/> <input type="radio"/> Maryland	<input type="radio"/> <input type="radio"/> <input type="radio"/> Virginia
<input type="radio"/> <input type="radio"/> <input type="radio"/> Massachusetts	<input type="radio"/> <input type="radio"/> <input type="radio"/> Washington
<input type="radio"/> <input type="radio"/> <input type="radio"/> Michigan	<input type="radio"/> <input type="radio"/> <input type="radio"/> West Virginia
<input type="radio"/> <input type="radio"/> <input type="radio"/> Minnesota	<input type="radio"/> <input type="radio"/> <input type="radio"/> Wisconsin
<input type="radio"/> <input type="radio"/> <input type="radio"/> Mississippi	<input type="radio"/> <input type="radio"/> <input type="radio"/> Outside the United States
<input type="radio"/> <input type="radio"/> <input type="radio"/> Missouri	

Office of the Secretary**Defense Advisory Committee on Military Personnel Testing; Meeting**

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on July 11-13, 1990. The meeting will be held at the Monterey Plaza Hotel, 400 Cannery Row, Monterey, California 93940. The purpose of the meeting is to review: (1) Planned changes in the Department of Defense's Student Testing Program; (2) progress on developing paper-and-pencil and computerized enlistment tests; and (3) efforts to equate new and old test answer sheets. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than June 30, 1990.

Dated: June 13, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14042 Filed 6-15-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Antisubmarine Warfare; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Anti-Submarine Warfare will meet in closed session on 19 July, 1990, at Science Applications International Corporation, Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will receive briefings on current anti-submarine warfare programs, plans, and projected funding levels.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C.

552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 13, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14040 Filed 6-15-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Research, Development, Test & Evaluation Strategy Integration

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Research, Development, Test & Evaluation Strategy Integration will meet in closed session on June 25, 1990 at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on DoD strategic, tactical, and technology programs and activities. Intelligence scenarios will be presented and discussed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. app. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 11, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-13993 Filed 6-15-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of a Final Environmental Impact Statement (EIS) for Base Realignment, Fort Dix, NJ; Including Forts Bliss, TX; Dix, NJ; Jackson, SC; Knox, KY; Lee, VA; and Leonard Wood, MO

AGENCY: DoD, U.S. Army.

SUMMARY: Fort Dix has been proposed for realignment to semiactive status. Entry level training functions would be transferred from Fort Dix to other Army installations located within the continental United States. Basic combat training at Fort Bliss would be transferred to Fort Jackson. The

remaining installations at which training functions would be consolidated are Forts Knox, Lee, and Leonard Wood. This document considers only those realignment actions as recommended in the Defense Secretary's Commission and the effects of such actions.

No long-term adverse ecological or environmental health effects are expected at Fort Dix, Fort Bliss, or any of the receiving installations as a result of the realignment. Significant adverse socioeconomic effects could be expected in the local communities associated with Fort Dix. Lesser negative economic effects would occur at Fort Bliss. Forts Leonard Wood and Jackson would experience basically positive socioeconomic impacts, while the positive impacts at Forts Knox and Lee would not be as great.

SCOPING: Scoping meetings were held at Forts Dix, Jackson, and Knox. Public notices, requesting input and comments from the public concerning issues they believe should be addressed in the EIS, were issued in the regional areas within and surrounding each affected installation.

DRAFT STATEMENT: A Draft EIS was issued on February 2, 1990, and a public hearing was held near Fort Dix on March 12, 1990. Additionally, copies of the draft were mailed to interested parties in the regional areas within and surrounding each affected installation. Comments were received and incorporated in the Final EIS.

For a copy of the EIS, contact Mr. Richard Muller, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, VA 23510-1096, phone: 804-441-7767.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I, L&E).

[FR Doc. 90-13970 Filed 6-15-90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal

Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection concerning Novation/Change of Name Requirements.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 501-3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts; or (2) a name change, the contractor must submit certain documentation to the Government.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 1,000; responses per respondent, 1; total annual responses, 1,000; hours per response, .5; and total response burden hours, 500.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0076, Novation/Change of Name Requirements.

Dated: June 8, 1990.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 90-14022 Filed 6-15-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Intent To Prepare Environmental Impact Statement for Uranium-Atomic Vapor Laser Isotope Separation Production Plant

AGENCY: U.S. Department of Energy.

ACTION: Notice is hereby given that the Department of Energy (DOE) intends to prepare an environmental impact statement (EIS) on the siting, construction, operation, and decommissioning of a uranium-atomic vapor laser isotope separation (U-AVLIS) production plant.

SUMMARY: In December 1989, the Secretary of Energy approved a U-AVLIS demonstration and deployment plan that identified steps to demonstrate the U-AVLIS technology at plant scale by September 1992 and actions required to complete site evaluations and recommend a preferred site for a U-AVLIS production plant. A determination whether to proceed with deployment of the U-AVLIS technology will be made early in Fiscal Year 1993. As part of the National Environmental Policy Act (NEPA) planning process, DOE announces its intent to prepare an EIS in accordance with section 102(2)(C) of the NEPA on the siting, construction, operation, and decommissioning of the U-AVLIS plant. The U-AVLIS technology requires several major systems: chemical processing of uranium oxide compounds to produce metal feed material which might be purchased from outside sources, lasers that generate colored light used to photoionize heated uranium vapor, separators for enrichment in the uranium-235 isotope, and chemical processing to convert the metal product to uranium oxide for further processing by fuel fabricators into fuel for nuclear power reactors. In addition to the above major systems, a U-AVLIS plant requires refurbishing facilities for the separators and lasers, plus conventional utilities and support equipment. The proposed site for the U-AVLIS plant has not been determined. DOE is in the process of screening DOE-owned sites to identify those sites which will be evaluated as reasonable alternatives in the EIS.

The purpose of this advance NOI is to encourage early public involvement in the NEPA process and to solicit public comments on site evaluation criteria, candidate sites, and the proposed scope and content of the EIS. Because alternative sites for the proposed U-AVLIS plant to be included in the EIS will not be identified until December 1990, comments on the scope and content of the EIS should focus on generic issues related to the project and EIS preparation. DOE plans to publish a second NOI in January 1991 to solicit further comments on the scope and content of the EIS, particularly site-specific issues related to alternative sites. No scoping meetings are scheduled now. However, when the second NOI is published, it will announce the times and places for formal scoping meetings to be held in the vicinity of alternative sites.

DATES: Comments on the siting process and the scope and content of the EIS for the U-AVLIS plant are requested by July 18, 1990.

ADDRESSES: Written comments or suggestions on the siting process and the scope and content of the EIS should be sent to: Dr. Norton Haberman, NE-35, Office of Nuclear Energy, U.S. Department of Energy, Washington, DC 20585, Phone (301) 353-4781.

FOR FURTHER INFORMATION CONTACT:

General information on the U-AVLIS project may be obtained from Dr. Norton Haberman at the above address. General information on the procedures followed by DOE in complying with the requirements of NEPA may be obtained from: Ms. Carol Borgstrom, Director, Office of NEPA Project Assistance, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, Phone (202) 586-4600.

SUPPLEMENTARY INFORMATION:

Background

Uranium enrichment is crucial to national, economic, and energy security and is an essential element of the nuclear fuel cycle services the United States supplies to domestic and foreign utilities. Early in the 1980s, DOE began to look for a more efficient and cost competitive enrichment technology. Evaluation of the U-AVLIS process and other technological alternatives for future uranium enrichment was documented in two classified programmatic Environmental Assessments (DOE/EA-0174 and DOE/EA-0256) in 1982 and 1985, respectively. The decision to proceed with U-AVLIS research and development is documented in publicly available Findings of No Significant Impact (FONSI)s for these EAs. The Department is currently preparing EAs for prototype demonstrations of several components of the U-AVLIS process at the Lawrence Livermore National Laboratory, Livermore, California, and at the Oak Ridge Gaseous Diffusion Plant Site, Oak Ridge, Tennessee.

Conceptual Design

Historically, the DOE has utilized a diffusion process to enrich uranium hexafluoride gas in the U-235 isotope. In contrast, the U-AVLIS process uses metal feed that is vaporized, enriched, and subsequently condensed into solid metal product. Powerful laser light ionizes the uranium vapor and an electromagnetic device permits separation of product from the isotopically depleted tails. The metal product would then undergo chemical processing to convert it to uranium oxide for further processing into fuel for nuclear power reactors. It is believed that important environmental and

economic advantages can be obtained by the U-AVLIS process.

The U-AVLIS production plant would be a new uranium enrichment facility based on the U-AVLIS technology. The plant would have an ultimate capacity of approximately 9 million separative work units (SWU) per year and is expected to cost about \$1 billion to construct. Plant construction can be phased to accommodate needed production capacity for enriched uranium, depending on prevailing economic and market conditions.

A U-AVLIS production plant would require one or more uranium processing facilities. The first facility, which may not be necessary if adequate supplies of feed material can be purchased from private industry, would prepare feed for the U-AVLIS process by converting uranium bearing compounds to uranium metal in the appropriate physical form for feeding into the separator. The second facility would convert the enriched uranium metal product from the U-AVLIS process into a chemical form that could be shipped to fuel fabricators who manufacture fuel rods for nuclear power reactors.

A U-AVLIS production plant would be housed in approximately 800,000 square feet of new buildings. The basic utility systems would provide approximately 120 megawatts of electrical power and 62,000 gallons per minute of cooling water to the operating hardware. Existing facilities at the alternative sites would be used to the maximum extent possible.

Site Selection Process

The DOE intends to use a two part screening process to identify the reasonable siting alternatives which will be evaluated in detail in the EIS. Further, it is the DOE intent to consider only existing DOE-owned nuclear sites because they provide unique experience in handling large quantities of uranium materials and radioactive wastes, provide potential to significantly reduce the site infrastructure needs of a U-AVLIS production facility by using existing waste handling facilities, shops and support buildings, and supporting utilities, eliminate the need for Federal land acquisition costs, and provide the necessary institutional controls including secure locations.

During the initial screening process, all major DOE nuclear sites will be screened to determine if they qualify for further consideration. Among the factors to be used in the initial screening are: (1) Sufficient natural resources (land and water); (2) experience in handling uranium materials and radioactive, hazardous and mixed waste; (3)

existence and adequacy of a transportation network; and (4) potential for public risk.

Sites that qualify will be evaluated in more detail to identify which sites offer the best potential for successful deployment of the U-AVLIS technology. These sites will constitute the reasonable siting alternatives to be evaluated in detail in the EIS. Among the factors which will be considered in the detailed screening are: potential health and safety consequences to the public and plant workers; potential for direct and indirect environmental effects to land, water, and air resources; construction, capital and operating costs; the ease of construction of a U-AVLIS production plant because of existing facilities or experience; and community infrastructure (educational institutions, high technology support industries) that is valuable to the deployment of U-AVLIS technology.

NEPA Process

DOE has determined that the construction, operation, and decommissioning of a U-AVLIS production plant is a major Federal action that requires an EIS. In preparing the EIS, DOE intends to follow the NEPA process as outlined in the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR parts 1500-1508) and the DOE's guidelines for "Compliance with the National Environmental Policy Act" (52 FR 47662), as amended.

After the close of the public comment period on this Advance NOI, DOE will prepare a preliminary EIS implementation plan which would be used as guidance for the preparation of the EIS. In addition, DOE may begin generic work on the EIS. This work would include activities that are not site-specific such as preparing the purpose and need section of the EIS, preparing the description of the proposed action, developing supporting information and analyses to be used later in developing cost estimates, and analyzing certain generic occupational safety and health issues.

After completion of the screening process, the DOE will publish a NOI which identifies the reasonable alternative sites to be comparatively evaluated in the EIS. This Notice is expected in early 1991. The NOI will again solicit public comments on the scope of the EIS and on site-specific environmental issues. The NOI will also announce the times and locations of public scoping meetings to be held in the vicinity of each of the alternative sites.

After the close of the public comment period on the NOI, DOE will revise the EIS implementation plan, as appropriate. A draft EIS is scheduled to be published in 1992. A 45-day public comment period on the draft EIS is planned and public hearings to receive oral comments will be held approximately 1 month after distributing the draft EIS. Availability of the draft EIS, the public comment period, and the public hearings will be announced in the *Federal Register* and in local news media when the draft EIS is distributed.

A final EIS, which incorporates public comments received on the draft EIS, is expected in early 1993. No sooner than thirty days after the distribution of the final EIS, DOE will issue its Record of Decision in the *Federal Register*.

Alternatives

The EIS would present the environmental impacts of the construction, operation, and decommissioning of a U-AVLIS production plant at each of the alternative sites identified by DOE through the evaluation process. Other alternatives to be addressed include design alternatives to the U-AVLIS plant presented in the Conceptual Design Report and a No Action alternative. For the No Action alternative, the EIS would present a discussion of uranium enrichment without the U-AVLIS plant.

EIS Issues/Content

DOE's preliminary concepts for the EIS content and format are described below. Public comments are invited on these elements.

Environmental Impacts

The presentation in the EIS will include, as appropriate, consideration of the following categories of environmental impacts at the alternative sites during construction, operation, and decommissioning.

- Earth Resources; Physiography, topography, geology, and soil characteristics,
- Land Use; plans, policies, and controls,
- Water Resources; surface and ground water hydrology, use, quality, and pollution,
- Air Quality; meteorological basis, pollution, and sources,
- Radiation Background; cosmic, rock, soil, water, and air,
- Hazardous Materials; waste management, near and long term,
- Noise Levels; ambient, sources and sensitive receptors,

- Ecological Resources; aquatic, economically/recreationally important species, threatened and endangered species
- Socioeconomics; demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources
- Historical and Archaeological Resources; paleontological/archaeological sites, native American sites, landmarks
- Scenic and Visual Resources; wetlands
- Health and Safety; public and occupational impacts, accidents
- Natural Disasters; floodplains, seismic
- Unavoidable Adverse Impacts
- Natural and Depletable Resource Requirements and Conservation Potential

Decommissioning

Decommissioning would also be addressed in this EIS to define any issues that might provide a clear basis for the choice among alternatives. The level of detail in the decommissioning analysis will be sufficient to identify any major differences among sites. Additional NEPA review may be required in the future to address decommissioning when such a proposal is made.

Commercialization of Uranium Enrichment

DOE has submitted legislation to Congress for the establishment of a Government Corporation for the Uranium Enrichment Enterprise. To date, the Senate has passed a bill for the establishment of a Government Corporation for Uranium Enrichment and the House of Representatives has held several hearings on the issue. If a Government Corporation is established, the DOE may not be the proponent for deployment of the U-AVLIS technology; NEPA compliance and other regulatory requirements such as a Nuclear Regulatory Commission (NRC) license would likely become the responsibility of the Government Corporation. In this event the DOE would formally announce the cancellation of its planned NEPA compliance process for U-AVLIS deployment.

Issued this 12 day of June 1990, in Washington, DC.

Peter N. Brush,

Acting Assistance Secretary, Environment, Safety and Health.

[FR Doc. 90-14050 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance (DNCFIA)

AGENCY: U.S. Department of Energy.

ACTION: Intent to negotiate a research grant with Stanford University.

SUMMARY: "RESERVOIR TECHNOLOGY ENGINEERING RESEARCH." The U.S. Department of Energy (DOE), Office of Conservation and Renewable Energy through the DOE Idaho Operations Office, intends to negotiate on a noncompetitive basis, a grant for approximately \$300,000 during fiscal year 1990, and approximately \$350,000 a year for fiscal years 1991 through 1995 with Stanford University, Department of Petroleum Engineering, Stanford, California. The Statutory Authority for this grant is Public Law 93-410 Geothermal Research, Development, and Demonstration Act. The purpose of the reservoir technology research is to improve the technologies used to discover and understand geothermal energy. The authority for a noncompetitive grant is based on 10 CFR 600.7(b)(2)(i) criteria (A) and (B), as explained below.

(A) The activity to be funded is a continuation or renewal of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity of the activity.

The past work has been done under contract number DE-AS07-84ID12529. It has been determined that the contract should be converted to a grant. The research that will be conducted is for a public purpose, stimulation of the development of geothermal energy. Competition would unnecessarily delay the initiation of the proposed research and a change in supplier would remove from the program the reservoir engineering know-how that has been accumulated during the course of the Stanford-DOE cooperation. Timeliness of research is of prime consideration in the Reservoir Technology during the next several years, as the Department is embarking on a major new effort to provide significant technical advances to the geothermal industry in the next two years in order to mitigate severe, unexpected technical problems in a major geothermal producing area in the U.S.

(B) The activities are being conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such activities.

PROCUREMENT REQUEST

NUMBER: DE-FG07-90ID12934.

PROJECT OBJECTIVE: The purpose of the reservoir technology research is to improve the technologies used to discover and understand geothermal energy. One means to achieve this purpose is through education. The small size of the industry and the limited practical experience in development of this resource makes it imperative that DOE support the education of trained scientists and engineers to supply the needs of the geothermal industry. Both the trained reservoir engineers and the technical papers released by the program, constitute a major source of technology development in the geothermal industry. The Stanford Geothermal Program is the principal training institution providing reservoir engineers to the geothermal industry.

FURTHER INFORMATION CONTACT:

Ginger Sandwina, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued in Idaho Falls, Idaho, on May 29, 1990.

J. Roger Gonzales,

Director, Contracts Management Division, Idaho Operations Office.

[FR Doc. 90-14043 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Tubular Ultrasound; Unsolicited Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15450 to Tubular Ultrasound to provide financial assistance for building the electronic assembly and control unit of an advanced prototype of a portable pipe-handling system. DOE will provide \$78,500 for the project which will have a total cost exceeding \$210,000.

OBJECTIVE: The objective of the proposed project is to build and test a fieldworthy portable pipe-handling system with better inspection capabilities than conventional ultrasonic systems.

Based on the receipt of an unsolicited application, eligibility for this award is limited to Tubular Ultrasound, a private corporation with high qualifications in a specialized field of technology. The company is already providing similar

services to the industry. The inventor, who is president of the company, has advance orders for the first production units of the invention. Indirect energy savings will result due to the use of high strength, thinner tubes which will save energy in transportation and handling. It has been determined that this project has high technical merit.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR-542, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B",
Office of Procurement Operations.

[FR Doc. 90-14048 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-438-000, et al.]

Tampa Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 11, 1990.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER90-438-000]

Take notice that on June 1, 1990, Tampa Electric Company (Tampa Electric), tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to the Kissimmee Utility Authority (Kissimmee) of 35 megawatts of capacity and energy. The amendment provides for the sale of supplemental capacity and associated energy as part of the daily scheduling process.

Tampa Electric states that the Letter Agreement is submitted as a supplement to the Letter of Commitment, which supplements Service Schedule D (long-term interchange service) under the existing agreement for interchange service between Tampa Electric and Kissimmee, designated as Tampa Electric Rate Schedule FERC No. 16.

Tampa Electric proposes an effective date of June 1, 1990, for the amendment to the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Company Services, Inc.

[Docket No. ER90-422-000]

Take notice that on June 1, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company ("Southern Companies"), tendered for filing a change in practice under Service Schedule A, Service Schedule B, and Service Schedule C of the Interchange Contract between Gulf States Utilities Company and Southern Companies dated February 25, 1982, as amended. Southern Companies are proposing to adopt marginal replacement fuel cost for use in generating unit dispatch. Marginal replacement fuel cost dispatch will only be implemented after it is accepted without refund obligation under all wholesale and retail rates of Southern Companies. Southern Companies request that the change in practice be allowed to become effective on August 1, 1990.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Power Co.

[Docket No. ER90-446-000]

Take notice that on June 5, 1990, Pennsylvania Power Company ("Penn Power") pursuant to 18 CFR 35.13 tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs ("Boroughs") of New Wilmington, Wampum, Zelenople, Ellwood City and Grove City, respectively. The revenue effect of this change is to decrease revenues from the municipal resale class by \$83,643 or 1.14% for the test year ending April 30, 1991.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission ("Pa. PUC"). All of the proposed changes have been implemented as to Penn Power's retail customers and have been approved by the Pa. PUC. These settlement agreements were approved by the Federal Energy Regulatory Commission

through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement to agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pa. PUC.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Co.

[Docket No. ER90-398-000]

Take notice that San Diego Gas & Electric Company on May 29, 1990, tendered for filing proposed changes in its FERC Tariff 57, the Power Purchase and Sale Agreement between San Diego Gas & Electric Company and Escondido Mutual Water Company.

The changes will not increase revenues from the jurisdictional sale of electricity to Escondido at the Rincon Indian Reservation and have been made to separate services subject to the Commission's jurisdiction and the jurisdiction of the California Public Utilities Commission. SDG&E proposes to make the changes effective July 1, 1990 and has requested that the Commission waive the prior notice requirements specified in 18 CFR 35.3.

Copies of the filing were served upon SDG&E's sole jurisdictional customer, Escondido, and the California Public Utilities Commission.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power & Light Co.

[Docket No. ER90-448-000]

Take notice that on June 6, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated May 23, 1990, between the Pioneer Power and Light Company and WPL. WPL states that this new Wholesale Power Agreement revises the previous agreement between the two parties which was dated December 15, 1977, and designated Rate Schedule No. 118 by the Commission.

The purpose of this new agreement is to revise the terms of service. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Pioneer Power and Light Company and the Wisconsin Public Service Commission.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Westchester Resco Co., L.P.

[Docket No. ER90-447-000]

Take notice that on June 6, 1990, Westchester Resco Company, L.P. ("Westchester Resco") tendered for filing (1) A proposed rate schedule change (designated Westchester Resco Rate Schedule FERC No. 2) consisting of a Capacity Purchase Addendum (the "Capacity Addendum"), dated as of March 31, 1989, providing for the sale of electric energy generating capacity by Westchester Resco to Consolidated Edison Company of New York, Inc. ("Con Ed") of a biomass fueled small power production facility (the "Facility") located at Peekskill, Westchester County, New York and (2) a petition for waiver of the Commission's regulations regarding the submission of cost-of-service data and the submission of rate change schedules not less than 60 days prior to the date on which the proposed change is to become effective.

The proposed changes would increase revenues from jurisdictional sales by \$1,345,629.50 for the 12 month period ending March 31, 1990. The rate schedule change modifies Westchester Resco Rate Schedule FERC No. 1 (Letter Order, Docket No. ER82-688-000 (November 18, 1982)) by providing for the purchase by Con Ed of capacity from the Facility. Under Westchester Resco Rate Schedule FERC No. 1, Con Ed is currently purchasing all of the electric energy output of the Facility net of in-plant usage.

The principal reason for the proposed change is that Westchester Resco has agreed to provide Con Ed with capacity from the Facility, and Con Ed has agreed to purchase the capacity on the terms and conditions set forth in the rate schedule change.

Copies of the rate change filing have been served upon Con Ed.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Mississippi Power Co.

[Docket No. ER90-434-000]

Take notice that on June 1, 1990, Mississippi Power Company tendered for filing a change in practice under contract executed by the United States of America, Department of Energy, Acting by and through the Southeastern Power Administration and Mississippi Power Company, dated January 29, 1985 for the furnishing and interchange of various services. The change in practice

involves the use of marginal replacement fuel cost in lieu of blended replacement fuel cost in dispatching generating units on the Southern electric system, consisting of Mississippi Power Company, Alabama Power Company, Georgia Power Company, Gulf Power Company, Savannah Electric and Power Company and Southern Company Services, Inc.

Comment date: June 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13983 Filed 6-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1500-000, et al.]

Great Lakes Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP90-1500-000]

June 8, 1990.

Take notice that on June 6, 1990, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed an application in Docket No. CP90-1500-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide two billion cubic feet of backhaul gas transportation service on an annual basis for Northern States Power Company, a Minnesota corporation (NSP-Minnesota), and Northern States Power Company, a Wisconsin corporation (NSP-Wisconsin), all as

more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that NSP-Minnesota and NSP-Wisconsin, collectively referred to as Northern States, are local distribution companies serving the public with their authorized service territories within the states of Michigan, Minnesota, North Dakota, and Wisconsin, and that both corporations have requested Great Lakes to provide backhaul transportation service.

Great Lakes states that Northern States has sought to diversify its system-supply mix and to utilize storage services to meet its winter heating needs, and that, in order to meet these objectives on a short-term basis, Northern States has requested Great Lakes to receive and to transport up to two billion cubic feet of natural gas on an annual basis. Great Lakes states it would receive the gas at an interconnection between the facilities of Great Lakes and ANR Pipeline Company at Farwell, Michigan (Farwell receipt point) and that the gas would be transported, placed into storage, and then redelivered to Northern States.

Great Lakes states that to facilitate these storage arrangements, it would receive up to 15,000 Mcf per day at the Farwell receipt point during the months of April through November. It is indicated that from the receipt point, a thermally-equivalent quantity of natural gas would be backhauled to an interconnection between the facilities of Great Lakes and ANR Storage Company at Deward, Michigan (Deward interconnection), where it would be injected into storage to be held to meet the winter heating needs of Northern States' customers.

It is further indicated that to move the two billion cubic feet of natural gas from storage to Northern States' service territories, Great Lakes would receive up to 35,000 Mcf per day of natural gas at the Deward interconnection during the months of November through April. Great Lakes states that thermally-equivalent quantity of natural gas would be backhauled to an interconnection between the facilities of Great Lakes and Northern Natural Gas Company at Carlton, Minnesota, or to an interconnection between the facilities of Great Lakes and TransCanada PipeLines Limited near Emerson, Manitoba, Canada as part of Northern States' system-supply mix.

Great Lakes states that new facilities would not be constructed to provide the service, and that the proposed backhaul service is an interim service to be used while Northern States finalizes longer-

term storage-related arrangements. Great Lakes states that it has filed a settlement agreement in its open-access case, Docket No. CP89-2198-000; that it anticipates that the Commission would authorize Great Lakes to become an open-access transporter in the near future; and that if the Commission's authorization in this docket is issued prior to the Commission's authorization in Great Lakes' open-access case, that Great Lakes would terminate service under this certificate when Great Lakes implements the open access program. Great Lakes further states that it would not give preference to Northern States at that time over other open-access shippers.

Great Lakes states that the rate to be charged is based upon a similar forward haul service from Great Lakes' Western Zone to its Eastern Zone, and that the rate for Northern States' backhaul would be \$0.29185 per Mcf, which is equivalent to the Great Lakes FERC Gas Tariff, Original Volume No. 2, Rate Schedule T-15 100 percent load factor Eastern Zone rate less the company use gas cost (Eastern Zone Rate). Great Lakes states that the backhaul would be provided in two segments, and the rate would be similarly payable in two parts.

Great Lakes states that the public convenience and necessity would benefit by a grant of the application because Northern States would be able to diversify its sources of supply and utilize storage services, thereby providing a secure and reliable supply for the winter heating needs of the customers within its authorized service territories.

Comment date: June 29, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Border Pipeline Company

[Docket No. CP90-1478-000]

June 11, 1990.

Take notice that on June 1, 1990, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, NE 68102, filed in Docket No. CP90-1478-000 a petition for issuance of a declaratory order with respect to Northern Border's rights and obligations regarding a request by Natural Gas Pipeline Company of America (Natural) for interconnection with Natural's proposed Station 109 line, which Natural seeks to construct under NGPA section 311, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that the proposed Station 109 line effectively represents an extension of Northern Border's existing

certificated mainline, without Northern Border's acquiescence or participation. Northern Border's own expansion/extension project will be pursued in the context of the Commission's optional certificate procedures, 18 CFR 157.100 *et seq.*, Natural's attempt to proceed with construction under claimed authority of NGPA section 311 stands to confer upon Natural under competitive advantages.

It is further stated that the Commission should determine whether Natural (or Natural's shippers requesting the new interconnect/delivery point facilities) must provide, as a pre-condition to any interconnect request, demonstrable proof of "on behalf of" qualification, based on criteria established by the Commission in response to *Associated Gas Distributors v. FERC*, Case No. 88-1856 (D.C. Cir.) (AGD) (and any applicable requirements in Northern Border's FERC Gas Tariff); and, whether the subject interconnect/delivery point facilities are to be sized exclusively on the basis of demonstrably qualified section 311 transportation volumes.

It is explained that the Commission should determine whether the requested interconnection would constitute a new delivery point for purposes of scheduling and allocating capacity. In addition, Northern Border requests that the Commission determine if any interconnection by Northern Border would require NGA section 7(c) authorization.

Petitioner requests that the Commission establish whether Northern Border is required to confer upon Natural competitive advantages over Northern Border's own optional certificate expansion/extension project. Specifically, Northern Border must agree to the interconnect request pending a Commission response to AGD, and whether any construction/interconnection obligation arises by virtue of Northern Border's tariff, its subpart G blanket certificate (issued April 30, 1987), or any statute, rule or regulation under the Commission's authority.

Petitioner further requests that the Commission establish whether the extension of (and interconnection with) the existing ANGTA pre-build facilities by Natural's Station 109 line would contravene the conditional certificate issued to Northern Border (and others) in 1977.

Comment date: July 2, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Co.

[Docket No. CP90-1499-000]

June 11, 1990.

Take notice that on June 6, 1990, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-1499-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Coastal Gas Marketing Company (Coastal), under Midwestern's blanket certificate issued in Docket No. CP90-174-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Midwestern proposes to transport, on an interruptible basis, up to 50,000 dt equivalent of natural gas per day for Coastal. Midwestern states that construction of facilities would not be required to provide the proposed service.

Midwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 dt equivalent, 50,000 dt equivalent and 18,250,000 dt equivalent of natural gas respectively.

Midwestern advises that service under § 284.223(a) commenced May 15, 1990, as reported in Docket No. ST90-3232.

Comment date: July 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Midwestern Gas Transmission Co.

[Docket No. CP90-1498-000]

June 11, 1990.

Take notice that on June 6, 1990, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-1498-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Rangeline Corporation (Rangeline), under Midwestern's blanket certificate issued in Docket No. CP90-174-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Midwestern proposes to transport, on an interruptible basis, up to 50,000 dt equivalent of natural gas per day for Rangeline. Midwestern states that construction of facilities would not be

required to provide the proposed service.

Midwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 dt equivalent and 18,250,000 dt equivalent of natural gas respectively.

Midwestern advises that service under § 284.223(a) commenced May 12, 1990, as reported in Docket No. ST90-3233.

Comment date: July 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13984 Filed 6-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-11-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 11, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on June 7, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.* and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to volume No. 1 of CNG's FERC Gas Tariff:

Fourth Substitute First Revised Sheet No. 45
Third Substitute Third Revised Sheet No. 45
Third Substitute Fourth Revised Sheet No. 45
Substitute Fifth Revised Sheet No. 45

CNG proposes various effective dates as indicated on each tariff sheet.

The purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by one of its pipeline suppliers, Transcontinental Gas Pipe Line Corporation.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before June 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13987 Filed 6-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-129-000]

Sea Robin Pipeline Co.; Tariff Filing

June 11, 1990.

Take notice that on June 6, 1990 Sea Robin Pipeline Company (Sea Robin) tendered for filing the following Tariff Sheet as part of its FERC Gas Tariff, Volume No. 1:

Original Sheet No. 4-E

Sea Robin states that this filing is made in order for Sea Robin to implement a take-or-pay recovery mechanism consistent with the Commission's Order No. 500 series.

The proposed tariff sheet reflects Sea Robin's absorption of 50 percent of its buy-out and buy-down costs which Sea Robin has either actually paid or has become obligated to pay on or before June 6, 1990 and reflects direct billing of the remaining 50 percent of the buy-out and buy-down costs to its jurisdictional sales customers.

Sea Robin has requested an effective date of June 7, 1990 for the tariff sheet and is also requesting such waivers as are necessary for the tariff sheet to become effective on such date.

Sea Robin states that copies of this filing are being served upon Sea Robin's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such petitions or protests should be filed on or before June 18, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene in accordance with the Commission's Regulations. Copies of this filing are on file with the Commission and are also available at

Sea Robin's offices in Houston, Texas and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13985 Filed 6-15-90; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP90-2-003]

Williston Basin Interstate Pipeline Co.; Change in FERC Gas Tariffs

June 11, 1990.

Take notice that on June 7, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the tariff sheets and supporting workpapers reflect the reallocation of costs among the Company's sales and transportation rates to accommodate revising the rate form under Rate Schedule X-3 from a firm transportation service to an interruptible transportation service in compliance with the Commission Order of May 23, 1990 in the instant docket. Williston Basin requests that these tariff sheets be made effective April 3, 1990. The remainder of the revised tariff sheets submitted by Williston Basin reflect the Commission's acceptance of the Company's Purchased Gas Adjustment filing in Docket Nos. TQ90-4-49-000 and RP90-113-999 subject to refund and conditions by Order dated June 1, 1990. Williston Basin requests that these tariff sheets be made effective May 1, 1990.

Williston Basin states that copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13986 Filed 6-15-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Thursday, July 26, 1990; 10 a.m.-3 p.m.

Place: Room 1E-245, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Thursday, July 26, 1990

—Presentation and discussion of the report of the HEPAP SSC Cost Estimate Oversight Subpanel

—Reports on and discussions of topics of general interest in high energy physics

—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 am to 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 13, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-14049 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-08-NG]

Enjet Natural Gas Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas From Canada or Mexico, and Other Countries

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas, including liquefied natural gas from Canada or Mexico, and other countries.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enjet Natural Gas (Enjet) blanket authorization in FE Docket No. 90-08-NG to import up to 100 Bcf, and to export up to 100 Bcf, of natural gas, including liquefied natural gas, from or to Canada or Mexico, and other countries, over a two-year period beginning on date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 7, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14044 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders Issued During Week of April 2 Through April 6, 1990

During the week of April 2 through April 6, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Robert Burns, 5/17/90, LFA-0038

Robert Burns filed an Appeal from a determination issued by the Office of Procurement Operations (OPO). In that

determination, OPO informed Mr. Burns that four of the five documents he requested in his Freedom of Information Act (the FOIA) request could not be located and were presumed to be discarded. After the Appeal was filed, the OPO conducted a new search and located the four contracts. In considering the Appeal, the DOE found that OPO's original search was inadequate under the FOIA. The Appeal was therefore granted, and the matter was remanded to the OPO to review the four documents to issue a new determination.

Refund Applications

Alcan Rolled Products Co., 5/16/90, RF272-472, RD272-472

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Alcan Rolled Products Company (Alcan) based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the petroleum in the fabrication of aluminum products, and determined its claim using actual purchase records. The applicant was an end-user and was therefore presumed injured. A consortium of 28 states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Alcan's Application for Refund was granted. The total refund amount granted is \$31,962.

Amax Copper, Inc., 5/16/90, RF272-9615, RD272-9615

The DOE's (DOE) Office of Hearings and Appeals (OHA) granted an Application for Refund filed by Amax Copper, Inc. (Amax) in the Subpart V Crude Oil refund proceeding. A group of twenty-eight states and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Amax's application. The States also submitted a Motion for Discovery. OHA rejected the States' objections and motion for discovery. However, OHA determined that 10 percent of Amax's sales during the period of crude oil price controls were affected by cost adjustment clauses in its sales contracts. Accordingly, OHA found that the end-user presumption of injury had been partially rebutted. OHA reduced Amax's refund accordingly. The refund granted in this case was \$82,871.

Atlantic Richfield Co./ Temple Oil Co. of Lufkin, Texas, 5/15/90, RF304-5087, RF304-5088

On January 10, 1990, the DOE granted Temple Oil Company of Lufkin, Texas, a refund of \$5,000 in principal in the Atlantic Richfield special refund proceeding. The DOE issued a Decision and Order concerning two additional Applications for Refund filed by Temple, a reseller of petroleum products. The DOE determined that Temple's total claim should be evaluated under the 41% mid-level presumption of injury rather than the small claims presumption of injury. As a result, the DOE granted Temple an additional refund of \$2,144, representing \$1,560 in principal and \$584 in interest. The total refund granted to Temple in this Decision and in the January 10th Decision was \$8,849, representing \$6,560 in principal and \$2,289 in interest.

Brown & Williamson Tobacco Corp., 5/17/90, RF272-31700, RD272-31700

The DOE granted a refund to Brown & Williamson Tobacco Corp. (Brown), a purchaser of refined petroleum products during the period of August 19, 1973 through January 27, 1981. A group of thirty States and two Territories of the United States (the States) filed a consolidated pleading objection to Brown's application. The only evidence submitted by the States was an affidavit by an economist stating that virtually every industry was able to pass through some costs to its customers. Additionally, the States referred to industry-wide studies to show that food prices were very responsive to increased costs. The DOE found that the evidence offered by the States was insufficient to rebut the presumption of end-user injury, particularly in light of the fact that Brown was not a food producer. Consequently, the OHA determined that the applicant should receive a refund. In addition, OHA denied a Motion for Discovery which the States had filed. Accordingly, Brown was granted a refund of \$35,158.

Cyprus Yampa Valley Coal Corp., 5/18/90, RF272-17358, RD272-17358

The DOE issued a Decision and Order concerning an application for refund filed by Cyprus Yampa Valley Coal Corp., a coal mining company, in the Subpart V crude oil proceeding. A group of States and Territories (the States) objected to the application on the grounds that certain studies may indicate that the coal mining industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this

evidence was sufficient to rebut the end-user presumption relied upon by Cyprus Yampa Valley Coal Corp. and therefore the DOE should deny its application. The DOE granted the refund application, determining that the States had failed to show that Cyprus Yampa Valley Coal Corp. itself had passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury.

Exxon Corporation/ Coral Petroleum, Inc., 5/16/90, RF307-9940

The DOE issued a Decision and Order denying an application for refund filed by Coral Petroleum, Inc., a spot purchaser in the Exxon Corporation special refund proceeding. In *Exxon*, the DOE established a rebuttable presumption that resellers who made spot purchases from Exxon did not suffer injury as a result of those purchases. Since Coral did not rebut the spot purchaser presumption of injury, it was ineligible to receive a refund. Accordingly, this application was denied.

Exxon Corp./Odessa L.P.G. Transport, Inc., 5/18/90, RF307-10121

The DOE issued a Supplemental Order in the Exxon Corporation special refund proceeding regarding Odessa L.P.G. Transport, Inc. (Odessa). In *Exxon Corp./Isam A. Kussad*, Case Nos. RF307-1500 *et al.* (April 18, 1990), Odessa, Case No. RF307-10019, was granted a refund of \$1,034 (\$802 principal plus \$232 interest) based on its purchases of 3,206,298 gallons of natural gas liquids from Exxon. In approving its claim, OHA inadvertently overlooked the firm's refund claim based on additional purchases of 2,615,878 gallons of propane from Exxon. Accordingly, the DOE granted Odessa a supplemental refund of \$949 (\$654 principal plus \$195 interest).

Florida Steel Corp., 5/14/90, RF272-486, RD272-486

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Florida Steel Corporation (Florida Steel) based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the petroleum for its production of steel for construction purposes, and determined its claim using actual purchase records. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 28

states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Florida Steel's Application for Refund was granted. The total refund amount granted is \$28,185.

Gulf Oil Corp./Gas 'N Save, Inc., Jim Moss Service, 5/17/90, RF300-8407, RF300-8570

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant established that it purchased some or all of its Gulf products indirectly from Gulf jobbers. These jobbers did not show that they absorbed Gulf's alleged overcharges. Accordingly, we treated the two applicants in the same as we generally treat applicants who purchased directly from Gulf. The sum of the refunds granted in this Decision, including interest, is \$11,364.

Gulf Oil Corp./Peter F. Vaira, 5/17/90, RR300-0009

The DOE denied a Motion for Reconsideration concerning an Application for Refund filed by Peter F. Vaira (Vaira) in the Gulf Oil Corporation special refund proceeding. In that Decision, the DOE refused to grant Vaira, a retailer, his full allocable share, because he did not submit any record of banks of unrecovered costs. The Motion for Reconsideration was denied because Vaira did not submit any new evidence to demonstrate banks of unrecovered costs.

Gulf Oil Corp./Pueschel's Gulf, 5/14/90, RF300-8491

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Pueschel's Gulf. The Application was approved using a presumption of injury. The total refund granted in this Decision is \$732.

Gulf Oil Corp./Rutledge Service Center, 5/14/90, RF300-11120

The DOE issued a Supplemental Order concerning two Applications for Refund submitted by an applicant in the Gulf Oil Corporation special refund proceeding. In two individual Decision and Orders issued by the DOE, Mr. Lafon Rutledge was granted separate refund amounts based on overlapping gallonage claims. Accordingly, this Decision rescinded an earlier Decision and Order, *Gulf Oil Corporation/Ponzio Fuel Company, et al.*, Case Nos. RF300-

10409, *et al.*, 20 DOE ¶ — (February 1, 1990), with respect to this applicant's claim. In addition, this Decision stated that the applicant shall remit to the DOE the \$1,268 refund amount granted in the February 1, 1990 Decision.

Murphy Oil Corp./Majik Market, 5/17/90, RF309-541

The DOE issued a Decision and Order denying the Applicant for Refund filed by Majik Market (Majik) for its Little Rock, Arkansas station in the Murphy Oil Corporation special refund proceeding. Since Majik acquired the Little Rock station after the end of the refund period in a purchase of the station's assets, OHA determined that Majik was not the eligible recipient of a refund based on this station's pre-sale purchase volumes. The refund application filed by Majik Market was accordingly denied.

Rice County Highway Department, 5/17/90, RF272-42133

The DOE issued a Decision and Order granting a refund to Rice County Highway Department, an end-user of refined petroleum products. Philip P. Kalodner, counsel for Utilities, Transporters, and Manufacturers objected on the grounds that (1) governmental authorities are ineligible to receive crude oil refunds, and (2) the presumption of injury for end-users is rebutted because the applicant passed through the alleged crude oil overcharges in the form of taxes. The DOE found that, by receiving 40 per cent of the crude oil overcharges for indirect restitution, the states and other governmental authorities have not waived the right to receive direct restitution in the Subpart V crude oil proceeding for their petroleum product purchases. The DOE also determined that the end-user presumption of injury does apply to the applicant, which is a municipal department wholly unrelated to the petroleum industry. Rice County Highway Department was granted a refund of \$1,066 based on its purchases of 1,331,987 gallons of petroleum products.

State of North Dakota, 5/16/90, RF272-18164

The DOE issued a Decision and Order concerning an Application for Refund that the State of North Dakota (North Dakota) filed in the crude oil refund proceeding being administered by the DOE under 10 CFR part 205, subpart V. The DOE determined that the claims were meritorious and granted a refund of \$203,441. Philip P. Kalodner (Kalodner), counsel for Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections

to North Dakota's Application for Refund. The DOE determined that Kalodner's Comments and Objection was insufficient to rebut the presumption of end-user injury. North Dakota will be eligible for additional refunds as additional crude oil overcharge funds become available.

Texaco Inc./Andy's Texaco on 38th, 5/17/90, RF321-3705, RF321-4002

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Andy's Texaco on 38th. The applicant filed two applications within four days of each other. Both applications certified that the applicant had filed only one refund application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Dailey Oil Co., 5/17/90, RF321-2496, RF321-4291

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Dailey Oil Co. On April 25, 1990, the applicant filed an application in which it indicated that it had not filed any other Texaco refund application. However, the applicant had previously authorized the filing of a Texaco refund application on March 23, 1990. The gallonage totals included in the duplicate application encompassed the gallons listed in the first application. In view of the misrepresentation, the DOE determined that both refund applications should be denied.

Walnut Grove Products, 5/18/90, RF272-12140

The DOE issued a Decision and Order denying an Application for Refund filed by Walnut Grove Products (Walnut), a division of W.R. Grace & Co. (Grace), in the subpart V crude oil refund proceeding. The DOE's denial was based on the fact that Grace's affiliate, Grace Distribution Services, had filed an application for a refund from the Surface Transporters Escrow and had thereby waived Walnut's right to a refund in the crude oil refund proceedings.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Silverton Arco <i>et al.</i>	RF304-5614.....	5/17/90
Atlantic Richfield Co./ Standifer's Arco <i>et al.</i>	RF304-8498.....	5/17/90

Name	Case No.	Date
Atlantic Richfield Co./ Steinman's Arco et al.	RF304-8776.....	5/18/90
Atlantic Richfield Co./ Vargas, Inc. et al.	RF304-4937.....	5/18/90
Dennis G. Wall et al.	RF272-1416.....	5/18/90
Exxon Corp./Bill Wise et al.	RF307-6314.....	5/18/90
Exxon Corp./ Brookland Exxon et al.	RF307-9942.....	5/16/90
Gulf Oil Corp./Glenn Smith Oil Co., Inc.	RF300-4104.....	5/17/90
Gulf Oil Corp./Harbor Supply Oil Co., Inc.	RF300-9348.....	5/14/90
Gulf Oil Corp./ Harvey's Gulf, Melvin L. Branner.	RF300-10019	5/17/90
Gulf Oil Corp./Henry Duncan's Gulf.	RF300-10297	5/14/90
Gulf Oil Corp. Winters Oil Co.	RF300-10298	5/18/90
Joseph M. Zamoiski Co. et al.	RF272-76800	5/18/90
R.N. Adams Construction Co. et al.	RF272-77200	5/15/90
Shell Oil Co./ Georgantas Shell Car Wash et al.	RF315-1070.....	5/17/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Ajax Paving Industries, Inc.	RF272-32277 RD272-32277
Albert Pinho	RF307-9877
Bill's Arco Service Station	RF304-8012
Coronado Arco	RF304-8816
East Park Exxon	RR307-4
Elmo Newell Service Station	RF321-1586
Elmo Newell Texaco Station	RF321-3888
Foreman Sales & Service	RF307-9950
Foss Maritime Company	RF304-3137
Gentile Oil Co.	RF304-3449
Georg's Exxon	RF307-1092
ICI Americas, Inc.	RD272-44088
L.D.M., Inc.	RF272-65422
Mack and John's Service	RF300-10369
Magic Chef Division of Maytag Corporation	RF304-9150
Manchester Exxon	RF307-8163
Mcalpin Texaco	RF321-678
Michael J. Legros	RF300-10353
Northwest Natural Gas Company	RF272-36272
Park Auto	RF307-9774
Sorco Products, Inc.	RF272-36118 RD272-36118
Town of Sturbridge	RF321-3617
Transamerica Airlines	RF300-10371
Twin Lakes Gulf	RF300-10370
Young's Exxon Products	RF307-1936

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 100 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available

in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 12, 1990.

George B. Breznay,
Director, Office of Hearings and Appeals.

[FR Doc. 90-14045 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During Week of May 14 through May 18, 1990

During the week of May 14 through May 18, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Foster Fuels, Inc., 04/04/90, LEE-0004

Foster Fuels, Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA-782B.

McMahan Oil Co., 04/04/90, LEE-0006

McMahan Oil Co. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA-782B.

Supplemental Order

Economic Regulatory Administration/T.
E. Reserve Corp., 04/03/90, LRX-
0003

The Department of Energy considered some of the issues presented by the enforcement proceeding involving T. E. Reserve Corporation (TERC). The

Proposed Remedial Order issued to TERC by the Economic Regulatory Administration alleges that the firm violated the layering rule, 10 CFR 212.186, by reselling crude oil at a markup without performing any historical and traditional crude oil reselling service. The DOE rejected the ERA's contention that all of the firm's transactions, even those in which TERC transported or stored crude oil, were layered because they allegedly facilitated crude oil miscertifications by other firms. The DOE also found that the ERA improperly ignored a 900,000 barrel discrepancy between the purchase and sales volumes it used in the PRO to calculate the alleged overcharge amount. Accordingly, the DOE issued an Interlocutory Order directing the ERA to provide a new schedule of overcharges which does not treat as layered those transactions in which TERC transported or stored crude oil and which adjusts for the 900,000 barrel discrepancy.

Refund Applications

Alyeska Pipeline Service Co., 04/03/90,
RF272-32565

The DOE issued a Decision and Order granting a crude oil refund application filed by Alyeska Pipeline Service Company. Alyeska was partly owned by seven oil companies which had previously received a refund from the Stripper Well Refiners Escrow. The DOE found that no single oil company owned a controlling interest in Alyeska and, therefore, Alyeska was not considered an "affiliate" of the seven firms as that term is defined in Paragraph VII of the Stripper Well Settlement Agreement. Accordingly, the DOE held that the Refiners Escrow Release of Claims did not preclude Alyeska from receiving a subpart V crude oil refund. As an end-user, Alyeska was entitled to receive a refund of its full volumetric share. The total refund amount approved in this Decision is \$117,855.

American Jet Aviation, 04/06/90, RF272-
6847, RD272-6847

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to American Jet Aviation for purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE determined that the evidence offered by a group of States was insufficient to rebut the presumption of end-user injury and that the Applicant should receive a refund. In addition, a Motion for Discovery filed by the States was denied. The amount of the refund granted in this Decision is \$6,193.

Atlantic Richfield Co./John Mento Jr., Mento's Arco, 04/03/90, RF304-7725, RF304-11164, RF304-11165

The DOE issued a Decision and Order concerning three Applications for Refund filed by claimants in the Atlantic Richfield Company special refund proceeding. Each of the Applications was based upon purchases of eligible ARCO products by Mento's Arco, a retail motor gasoline outlet located in Bridgeport, CT. John Mento Jr. owned and operated the outlet as a sole proprietorship during the claims period until he sold it to Ronald DeBiase in 1979. Mr. DeBiase in turn sold the outlet to Davoud Molavi and Parivash Mofrad in February of 1981. Because there was no evidence that the right to claim a refund based upon the ARCO purchases of the Mento outlet had been transferred in either sale of the outlet, the DOE concluded that any injury related to the ARCO purchases fell upon the owners of the outlet at the time eligible purchases of ARCO products were made. Therefore, Mr. Mento's application was approved based upon the purchases at the outlet during his tenure of ownership, as was Mr. DeBiase's for his term of ownership. Because Mr. Molavi and Mr. Mofrad acquired the Mento outlet after the period for which refunds are available, their Application was denied. The refunds granted in this Decision totaled \$1,465, including \$392 in accrued interest.

Courtaulds North America, Inc., et al., 04/06/90, RF272-52822, et al., RD272-52822, et al.

The DOE issued a Decision and Order concerning three applications for refund filed by manufacturers of textile products in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to the textile manufacturers' applications on the ground that certain studies suggested that the textile products industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. In rejecting that argument and the States' Motions for Discovery, the DOE determined that the States had failed to show that the three textile manufacturers themselves had passed through increased fuel costs. Accordingly, the textile manufacturers' applications were approved and the States' Motions for Discovery were denied.

Darling Holdings, Inc., 04/03/90, RF272-23228, RD272-23228

The DOE issued a Decision and Order granting a refund from crude oil

overcharge funds to the Darling Holdings, Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a processor of animal by-products, demonstrated the volume of its claim by making a reasonable estimate of its purchases. The applicant was an end-user of the products it claimed and was therefore presumed injured by crude oil overcharges. The DOE rejected objections filed by a group of States asserting that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE also denied a Motion for Discovery filed by the States. The total refund granted to Darling was \$35,958.

East Kentucky Power Cooperative, Inc., 04/05/90, RF272-418

The DOE issued a Decision and Order concerning an Application for Refund filed in the subpart V crude oil overcharge refund proceeding by East Kentucky Power Cooperative, Inc. (EKPC). EKPC was involved in the generation and transmission of electrical power and was an end-user of refined petroleum products. The OHA found no support for the objections of a group of States and Territories which argued that EKPC was not the appropriate recipient of the refund. The DOE granted EKPC a total refund of \$5,314 and ordered EKPC to pass through the refund to its customers and to notify its state regulatory board of the receipt of a refund pursuant to the certification in EKPC's Application for Refund.

Exxon Corp./Angel Luis Valentin, et al., 04/06/90, RF307-9252, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding by resellers whose allocable share was less than \$5,000. The DOE determined that gallonage information submitted in the DOE Stripper Well Exemption Litigation was insufficient for this proceeding and used instead the purchase volume sheet provided by Exxon for each applicant. However, the DOE adjusted the Exxon figures to reflect purchases during 1973 through 1975, which did not appear on the sheet. The sum of the refunds granted in this Decision is \$9,035 (\$7,058 principal plus \$1,977 interest).

Exxon Corp./John H. Jensen, et al. 04/03/90, RF307-8766, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed in the Exxon Corporation special refund proceeding. All of the applicants

purchased products from Standard Oil Company of Indian (Amoco) and were Amoco-branded dealers during the consent order period. Since a portion of Amoco's motor gasoline supply during this period was composed of Exxon product, the applicants were indirect purchasers of Exxon products. However, since the Exxon overcharges experienced by Amoco would have been spread over all gallons sold by Amoco to all its customers, the DOE calculated a separate volumetric amount for these applicants by spreading the portion of Amoco's allocable share of the Exxon consent order fund attributable to motor gasoline over the total number of gallons of motor gasoline sold by Amoco during the consent order period. The DOE calculated the applicants' allocable shares according to this volumetric amount, and in each case, the refund for each applicant was less than the \$15.00 minimum refund amount set forth in the Exxon proceeding. Accordingly, these Applications for Refund were denied.

Exxon Corp./Joshway's Exxon, et al., 04/04/90, RF307-879, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was an indirect purchaser of Exxon products whose supplier, the direct purchaser of Exxon products, had not demonstrated or did not intend to demonstrate injury in this proceeding. Each applicant was a retailer whose allocable share is less than \$5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$14,333 (\$11,198 principal plus \$3,135 interest).

Gulf Oil Corp./Inter City Oil Co., Inc., 04/04/90, RF300-9371, RF300-9372

The DOE issued a Decision and Order concerning two Applications for Refund filed by Inter City Oil Co., Inc. in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest is \$45,607.

Gulf Oil Corp./O.W. Duncan, et al., 04/02/90, RF300-173, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Although each applicant purchased some or all of its Gulf products indirectly from Gulf jobbers, these jobbers did not show that they were injured by Gulf's alleged

overcharges. Accordingly, the four applications were considered as if the product was purchased directly from Gulf. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$9,785.

International Distribution Centers, Inc.,
04/06/90, RF272-21127

The DOE issued a Decision and Order denying an Application for Refund filed by International Distribution Center, Inc. (IDCI) in the subpart V crude oil proceeding. The DOE's denial was based on the fact that IDCI had applied for and been granted a refund from the Surface Transporters Escrow and had thereby waived their right to a refund in the crude oil proceeding.

Komatz Construction, Inc., 04/04/90,
RF272-25545, RD272-25545

Komatz Construction, Inc., a highway construction contractor, filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. As in previous decisions, OHA rejected objections filed by a group of States asserting that industry-wide data constituted sufficient evidence to rebut the presumption that Komatz was injured by crude oil overcharges. The refund approved was \$56,013. A Motion for Discovery filed by the States was denied.

Mount Hope Finishing Co., 04/06/90,
RF272-470

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Mount Hope Finishing Co., a textile finishing company. The DOE rejected the general objections of a group of States asserting that firms in the textile industry were, overall, able to pass through increased energy costs and that Mount Hope should therefore not be presumed injured. Accordingly, the DOE granted Mount Hope a refund of \$10,071.

Murphy Oil Corp./Ericson Oil Corp./
Kent Oil & Trading Co., 04/06/90,
RF309-105, RF309-1363

The DOE issued a Decision and order considering Applications for Refund filed by two spot purchasers of Murphy Oil Corporation product, Ericson Oil Corporation and Kent Oil & Trading Company. Since neither applicant attempted to rebut the spot purchaser presumption of non-injury, the portion of the Ericson application based on spot purchases was denied and Kent's entire application was denied. Ericson was granted a refund of \$230 (\$183 in principal and \$47 in interest) under the small claims injury presumption based

on the \$224,000 gallons on distillate fuels that were not spot purchases.

Pedersen Oil, Inc./Roy's Auto
Specialty, Inc., 04/04/90, RF318-9

Based on supplemental information received from Roy's Auto Specialty, Inc. in the Pedersen Oil, Inc. special refund proceeding, the DOE increased Roy's total refund to \$979, including interest.

Sauvage Gas Co./Walsh Propane, Inc.,
et al., 04/06/90, RF308-6, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund filed in the Sauvage Gas Company special refund proceeding. The Applications were granted using appropriate presumptions of overcharge and injury. The sum of the refunds granted in the Decision was \$40,134 (\$29,295 principal plus \$10,839 interest).

Simkins Industries, Inc., 04/03/90,
RF272-23219

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the Simkins Industries, Inc., a manufacturer of recycled paperboard and an end-user of refined petroleum products. The DOE rejected the objections filed by a group of States asserting that pulp and paper manufacturers were generally able to pass through increased energy costs and that Simkins should therefore not be presumed injured. Accordingly, the DOE granted Simkins a refund of \$61,465.

Standard Oil Co. (Indiana)/Michigan,
04/06/90, RM21-169

The DOE issued a Decision and Order approving a Motion for Modification filed by the State of Michigan in the Amoco special refund proceeding. The State requested permission to move \$89,500 of its Amoco funds from its Freeway Speed Monitoring Program to its Traffic Signal Optimization Program, which is currently being funded with other second-stage monies. The purpose of the Traffic Signal Optimization Program is to purchase and install equipment to synchronize traffic lights in cities throughout the State. The OHA determined that the program was restitutionary in nature and approved it.

T. Brown Constructors, Inc., et al., 04/06/90, RF272-10167, et al.

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to nine applicants, all road construction companies or manufacturers of bituminous concrete. A group of States objected to the application on the grounds that the road construction industry in general did not suffer injury because of guaranteed raw material prices from suppliers and fuel escalator clauses with customers. Each

of the nine applicants indicated, however, that it did not have either guaranteed prices or price adjustment clauses. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted the applicants refunds totalling \$192,442. The States' Motions for Discovery filed in connection with five of the applications were denied.

The City of Des Moines, 04/04/90,
RC272-83

The DOE issued a Supplemental Order reducing to \$77 the crude oil overcharge refund previously granted to the City of Des Moines. The basis for the reduction was that the City had received a refund for petroleum products that it resold, but for which it had not demonstrated injury.

Town of Braintree Electric Light
Department, 04/04/90, RF272-8816

The DOE issued a Decision and Order concerning an Application for Refund filed by the Town of Braintree Electric Light Department in the subpart V crude oil refund proceeding. The DOE determined that the applicant was ineligible to receive a subpart V crude oil refund because it was an affiliate of the Town of Braintree, which waived its rights and those of its affiliates to such a refund by participating in the Stripper Well Settlement Agreement, as a claimant in the Refiners' Escrow. Accordingly, the Application was denied.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Kerr-McGee Corp., et al.	RF304-9016	04/03/90
Atlantic Richfield Co./ Northwest Orient Airline.	RF304-6888	04/04/90
Atlantic Richfield Co./ Shirley Oil & Supply Co. et al.	RF304-6743	04/04/90
Atlantic Richfield Co./ Sung's Arco Service et al.	RF304-2357	04-05/90
Exxon Corp./Andy Anderman, Inc. et al.	RF307-37	04/04/90
Exxon Corp./John S. McCarthy Oil Service et al.	RF307-4674	04/04/90
Fred J. Decker et al.	RF272-3563	04/03/90
Getty Oil Co./I-29 Oil, Ltd.	RF265-2877	04/03/90
	RF265-2884	
Gulf Oil Corp. Culler's Gulf et al.	RF300-8273	04/06/90
Gulf Oil Corp./L. E. Shifflett.	RF300-6038	04/02/90

Name	Case No.	Date
Ben T. Hamilton Gulf Distributor, F.M. Lawhon, Distributor.	RF300-8771 RF300-8787	

Dismissals

The following submissions were dismissed:

Name	Case No.
Atkison Gulf Station	RF300-8727
Bill Frank	RF272-35670
Cedco Drilling Company	RF272-41461
Doris Tighe Coe	LFA-0025
Freestate Exxon	RF307-9352
Garcia's Exxon #2	RF307-9922
George Brox, Inc.	RF272-32564 RD272-32564
Gratiot & Mt. Elliot	RF315-6532
Hank's Arco #2	RF304-9379
Mack and Van Dyke	RF315-6534
Paul's Gulf	RF300-9997
The Korner Store	RF307-3953
U-Gas	RF307-9135
University Exxon	RF307-1220
Waugh Chapel Exxon	RF307-9351
6080 Chene and Ford	RF315-6533

Copies of the full text of these decisions and orders are available in the Public Reference room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 12, 1990.

George B. Breznay,
Director, Office of Hearings and Appeals.
[FR Doc. 90-14046 Filed 6-15-90; 8:45 am]
BILLING CODE 6450-01-M

Refund Procedures; Implementation

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of \$1,200,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with Northeast Petroleum Industries, Inc. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures 10 CFR part 205, subpart V, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude

Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund submitted for a portion of the funds allocated to the refined products pool must be filed in duplicate and must be received no later than September 17, 1990. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All Applications for Refund from the refined product pool should display a reference to case number HEF-0580.

Applications for Refund from the crude oil pool should be clearly labeled "Application for Crude Oil Refund" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications for Refund from the crude oil pool must be filed in duplicate and postmarked no later than March 31, 1991. Any party who has previously filed an Application for Refund in crude oil proceedings should not file another Application for Refund from the crude oil pool. The previous crude oil Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Max Yano, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Northeast Petroleum Industries, Inc. and the DOE to settle possible violations of the federal petroleum price and allocation regulations with respect to its sale of crude oil and refined petroleum products. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Northeast consent order funds was issued on March 1, 1990. 55 FR 8523 (March 8, 1990).

This Decision sets forth the procedures and standards that the DOE has formulated to distribute the \$1,200,000 consent order fund. The OHA has decided to divide the funds into a refined products pool and a crude oil pool. The OHA will distribute these funds in accordance with the DOE's subpart V refund procedures, and in

accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Applications for Refund from the refined product pool will be accepted from customers who purchased controlled refined petroleum products from Northeast Petroleum Industries during the consent order period. Applications for Refund from the refined product pool must be postmarked no later than 90 days from the date of publication in the Federal Register to meet the filing deadline.

Applications for refund from the crude oil pool of funds must be postmarked no later than March 31, 1991. As we stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: June 11, 1990.

George B. Breznay,
Director, Office of Hearings and Appeals.
Name of Firm: Northeast Petroleum Industries, Inc.

Date of Filing: May 6, 1985.

Case Number: HEF-0580.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures in order to remedy the effects of alleged violations of the DOE regulations. See 10 CFR part 205, subpart V. On May 6, 1985, the ERA filed a petition with the OHA requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Northeast Petroleum Industries, Inc. (Northeast). 10 CFR part 205, subpart V. This Decision and Order establishes procedures for distributing these funds to qualified refund applicants.

I. Background

During the period of federal petroleum price and allocation controls, Northeast was a branded and non-branded independent marketer as those terms are defined in the Emergency Petroleum Allocation Act of 1973. 15 U.S.C. 751, *et seq.* Between January 1, 1973, and January 28, 1981 (the consent order period), Northeast engaged in the sale of crude oil, residual fuel oils and other covered petroleum products. Northeast was therefore subject to the

Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR 211 and 212. The ERA conducted an extensive audit of Northeast's operations and found in its September 30, 1980, Notice of Probable Violation (Case No. 110H00249) (NOPV) and in its August 27, 1982, Proposed Remedial Order (Case No. 6COX00241) (PRO) that the firm had likely violated applicable DOE pricing and allocation regulations in its sales of crude oil and refined petroleum products during the consent order period. In order to settle all claims and disputes between Northeast and the DOE, the two parties entered into a Consent Order that became final on August 15, 1983. Under the terms of the Consent Order, Northeast agreed to remit \$2,000,000 to the DOE to settle alleged violations that occurred during the consent order period.

The Consent Order states that \$800,000 of the \$2,000,000 remitted by Northeast would be disbursed directly to identifiable, eligible end-users of No. 6 residual fuel oil. According to ERA files, these distributions were made by Northeast.¹ As a result, there remains \$1,200,000 in principal in the Northeast Account (\$2,000,000 - \$800,000 = \$1,200,000).

On March 1, 1990, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Northeast consent order funds. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the Federal Register and comments were solicited. 55 FR 8523 (March 8, 1990). The only comments received concerned the proposed division of the consent order fund between crude oil and refined products and the proposed procedures for disbursing the crude oil funds. In this Decision and Order, we will address those comments, and we will adopt final refund procedures for the distribution of the funds in the Northeast escrow account.

II. Allocation of the Northeast Consent Order Fund

Because the Northeast Consent Order resolves alleged violations involving sales of both crude oil and refined products, in the PD&O we proposed to divide the fund into two pools. *Standard Oil Co. (Indiana)* 10 DOE ¶ 85,048 (1982). We estimated that Northeast sold approximately 8,758,848,629 gallons of crude oil and refined products during the

consent order period.² This total volume consisted of approximately 1,517,907,871 gallons (17.33 percent) of crude oil and 7,238,940,758 gallons (82.67 percent) of refined products.³ We proposed to divide the Northeast consent order fund between the crude oil and refined products pools in the same proportion as Northeast's sales occurred. Philip P. Kalodner, counsel for a group of six public utilities, fourteen transporters and four manufacturers, filed comments in which he objects to the proposal to divide the consent order funds based on Northeast's sales volumes. Mr. Kalodner states that such a division is unprecedented, and contends that, lacking information of litigation risk assessments by the ERA, the OHA should divide the fund on the basis of the alleged violation amounts on crude oil and refined product sales.

We are unpersuaded by Mr. Kalodner's arguments. Determining the proper division of a settlement fund is an intricate process which involves balancing a number of issues and concerns. For example, we consider the nature of the settlement reached, the size of the consent order firm, the scope of its operations, the information available in ERA audit files, the applicable enforcement documents, the relative accuracy of information contained in the foregoing documents, and numerous other factors. Although the ERA often makes specific suggestions regarding the division of a consent order fund, the OHA has the discretion to make a final determination regarding the most equitable allotment of funds. In the present case, our determination to divide the Northeast fund in the same proportion that the firm's sales occurred was similar to other cases in which we made the same choice and is based on a number of factors.

The Northeast Consent Order is global in nature; that is, it settles all regulatory violations against Northeast, regardless of whether or not the

violations had been formally alleged at the time of settlement. Thus, the Consent Order is not limited to the specific products or time periods discussed in the existing preliminary enforcement documents issued to Northeast. To look exclusively to these documents in determining the allocation of funds, as Mr. Kalodner suggests, ignores the global nature of this refund proceeding. Moreover, it is extremely important that neither the PRO nor the NOPV represents a final assessment that Northeast overcharged its customers. In similar cases, the OHA has found the division of a consent order fund according to a firm's sales volumes or sales revenues to be the most equitable means of allocating the fund. *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 at 88,514 (1985); *Standard Oil Company (Indiana)* 10 DOE at 88,195-88,197. The ERA has made no suggestions to the contrary.

We have carefully weighed all the available information and have determined that the method we originally proposed is the most equitable under the circumstances and best reflects the global nature of the Northeast consent order. Accordingly, we will divide the consent order fund as proposed, setting aside 17.33 percent, or \$207,960, as a pool of crude oil funds available for disbursement. The remaining 82.67 percent, or \$992,040, will be set aside as a pool of funds to be made available for distribution to claimants who demonstrate that they were injured by Northeast's alleged overcharges in its sales of refined petroleum products.

III. Refund Procedures for Crude Oil Claims

On July 28, 1986, as a result of the court-approved Settlement Agreement in *The Department of Energy Stripper Well Exemption Litigation, In Re: M.D.L. No. 378*, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Up to 20 percent of the crude oil violations amounts will be reserved to satisfy claims from injured parties that purchased crude oil and/or refined petroleum products between August 19, 1973 and January 31, 1981 (the crude oil price control period). We proposed that such claims be processed through subpart V special refund procedures. The MSRP also calls for the remaining 80 percent of the funds to be disbursed among state and federal

² Northeast has entered into three previous Consent Orders with the DOE involving sales of specific refined products made during specific time periods. We have deducted the volumes covered by the prior Consent Orders from Northeast's total sales volume. See *Northeast Petroleum Industries, Inc.*, 10 DOE ¶ 85,021 (1982); *Northeast Petroleum Industries, Inc.*, 13 DOE ¶ 85,162 (1985); *Northeast Petroleum Industries, Inc.*, 14 DOE ¶ 85,410 (1986). In addition, we have deducted the volume of No. 6 residual fuel oil for which direct refunds have been made pursuant to the present Consent Order.

³ See August 27, 1982, PRO and January 19, 1989, memoranda of telephone conversations between Matthew Paul, OHA staff analyst, and John Kanev, former owner of Northeast, and John Zentay, former counsel for Northeast. See also December 7, 1989 memorandum of telephone conversation between Ms. Maffett and Mr. Kanev.

¹ See June 2, 1989, memorandum of telephone conversation between Dan Bullington of ERA and Stephanie Maffett, OHA staff analyst.

governments for indirect restitution. Once all valid claims are paid, any remaining funds will be divided equally between the state and federal governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The Northeast crude oil funds are subject to the MSRP. Therefore, in the PD&O, we proposed to institute a claims process for the \$207,960 in crude oil funds involved in this proceeding. We determined to reserve the full 20 percent, or \$41,592, of the alleged crude oil violations amounts, plus a proportionate share of the accrued interest, for direct restitution to claimants that purchased refined petroleum products during the crude oil price control period. We proposed that the remaining 80 percent of the funds, of \$166,368, be disbursed in equal amounts to the state and federal governments for indirect restitution.

Mr. Kalodner also filed objections to this proposal on the grounds that the proposed 20 percent of the funds to be set aside for crude oil claimants will be insufficient to meet all potential crude oil claims and assure "full parity" for all refund claimants. Mr. Kalodner maintains that at least 22 percent of all crude oil monies will be necessary to meet all crude oil claims. He therefore proposes that 100 percent of the Northeast crude oil funds be reserved for end-user purchasers.

Mr. Kalodner has raised virtually the same arguments regarding the adequacy of the 20 percent reserve in numerous previous cases. See, e.g., *Texaco, Inc.*, 19 DOE ¶ 85,200 at 88,371-72; *New York Petroleum, Inc., et al.*, 18 DOE ¶ 85,435 at 88,701 (1988); *Getty Oil Company*, 18 DOE ¶ 85,808 at 89,322 (1989). In these cases, we have thoroughly addressed his concerns and rejected his claims. Therefore, it will suffice here to emphasize again that under the terms of the court-approved Settlement Agreement, the amount of a settlement fund which the OHA reserves for direct restitution may not exceed 20 percent. Settlement Agreement ¶ IV.B.6, 6 Fed.

Energy Guidelines ¶ 90,509 at 90,665. Furthermore, there is no evidence to suggest that the 20 percent reserve amount is insufficient for direct restitution. This same point was made by the U.S. District Court for the District of Columbia recently when it rejected a challenge based on the same assertion. See *Con. Ed. v. Herrington*, Nos. 87-1717, 88-0911, 88-1339, slip op. (D.D.C. May 14, 1990). Thus, as proposed, we will allocate 20 percent of the crude oil funds, or \$41,592, plus interest, for direct restitution to crude oil claimants. In addition, we will direct the DOE's Office of the Controller to distribute \$83,184 plus appropriate interest to the states and \$83,184 plus appropriate interest to the federal government.

As proposed, the process which the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR 205, subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e., that they did not pass through the alleged overcharges to their own customers). We will apply the standards for showing injury that the OHA has developed in analyzing non-crude oil claims. See, e.g., *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the Northeast crude oil refund pool of \$207,960 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,867. This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements

Program.⁴ The volumetric amount for the crude oil pool established in this proceeding is therefore \$0.000000103/gallon of refined products purchased (\$207,960/2,020,997,335,000 gallons = \$0.000000103/gallon).

IV. Final Refund Procedures for Refined Product Claims

No comments were filed with respect to the proposed procedures for distributing the refined product portion of the Northeast consent order fund. We will therefore adopt the proposed procedures for distributing the remaining \$992,040 in the Northeast consent order fund which is attributable to alleged violations involving refined products.

A. Exclusion From Refund Procedures

Firms and individuals that purchased Northeast refined products during the consent order period may file claims in this proceeding. However, as we stated in the PD&O, Northeast has entered into three prior Consent Orders with the DOE involving refined products, and special refund procedures have been established in connection with these Consent Orders. See note 2, *supra*. We will therefore exclude from this refund proceeding any claim attributable to transactions covered by a prior Northeast Consent Order.⁵ In addition, any potential claimant that received a direct refund from Northeast on the basis of purchases pursuant to this Consent Order will not be eligible for a refund in this proceeding based on those same purchases.⁶

⁴ The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil misallocations throughout the domestic refining industry. See, e.g., *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

⁵ The products and time-periods covered by the prior Consent Orders are as follows:

⁶ Northeast made these refunds to end-user customers based on their purchases of No. 6 residual fuel oil from Northeast during the period November 1973 to March 1974.

Case No.	Product	Consent order period
BEF-0065	Motor gasoline	November 1, 1973-April 30, 1974.
HEF-0137	#6 residual fuel oil sales to cargo lot customers (including resales to subsequent purchasers).	November 1, 1973-June 30, 1975.
HEF-0138	Motor gasoline	May 1, 1974-August 31, 1979.

B. Calculation of Refund Amounts

In establishing the procedures which will govern the Northeast special refund proceeding, we will adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible.⁷ *American Pacific International, Inc.* 14 DOE ¶ 85,158 (1986) (*API*). First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined products made by Northeast during the consent order period and that refunds should therefore be made on a volumetric basis. In the absence of better information, a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric refund approach, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per-gallon refund amount, plus accrued interest. As stated earlier, Northeast sold approximately 7,238,940,758 gallons of refined products during the consent order period. Accordingly, the per-gallon refund amount will be set at \$0.000137/gallon (\$992,040/7,238,940,758 gallons = \$0.000137/gallon). Successful applicants will also receive a pro rata share of the interest accrued on the Northeast escrow fund.

The volumetric refund presumption is rebuttable. We recognize that some claimants may have been disproportionately overcharged by Northeast. Therefore, any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In addition, we will establish a minimum amount of \$15.00 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than \$15.00 are sought outweighs the modest benefits of restitution in those situations. *Uban*, 9 DOE at 85,223.

C. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Northeast. Based on our

experience in prior subpart V proceedings, we will adopt a number of injury presumptions that will simplify and streamline the refund process. These presumptions excuse members of certain applicant categories from proving that they were injured by Northeast's alleged overcharges. We will discuss the applicable presumptions and the showing that each type of applicant must make below.

(1) End-Users

We will adopt a finding that end-users, or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Northeast Consent Order. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*Texas*). Therefore, end-users of Northeast products must only establish that they were ultimate consumers of a specific volume of Northeast products to qualify for a refund of their full allocable share of the consent order fund.

(2) Cooperatives and Regulated Firms

We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury as a result of alleged overcharges on refined products. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed any overcharges through to their customers, they would generally pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a detailed explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. See *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). However, utility claimants that are granted a refund of \$5,000 or less will not be required to certify that they will pass the refund through to their customers. See *Placid Oil Co.*, 18 DOE ¶ 85,176 (1988). We further note that a cooperative's sales of Northeast

products to non-members will be treated in the same manner as sales by other resellers.

(3) Resellers, Retailers and Refiners

a. Refiners, Resellers and Retailers Seeking Refunds of \$5,000 or Less. We will adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Northeast pricing practices. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224-25 (1982) (*Uban*). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of \$5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Northeast products it purchased during the settlement period. *Texas*, 12 DOE at 88,210.

b. Reseller and Retailer Mid-Level Presumption. As proposed in the PD&O, we will adopt the mid-level presumption which allows a reseller or retailer claimant whose allocable share exceeds \$5,000 to receive as its refund the larger of \$5,000 or 40 percent of its allocable share up to \$50,000 without making the detailed demonstration of injury that is described below.⁸ Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Northeast refined products during the consent order period. Resellers and Retailers that wish to receive refunds in excess of \$50,000 must follow the procedures for demonstrating injury. See *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987).

c. Refiners, Resellers and Retailers Seeking Larger Refunds. A refiner, reseller or retailer with a larger claim, (i.e., greater than \$5,000) will be required to provide a detailed showing of injury in order to receive its full allocable share. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed. Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from

⁸ National average profit margin data for resellers and retailers and our experience in past proceedings indicates that resellers and retailers were generally injured by 40 percent of the amount of alleged overcharges incurred in their purchases. See *Gulf Oil Corporation*, 16 DOE ¶ 85,381 at 88,737 (1987).

⁷ The subpart V regulations specifically authorize the use of presumptions in special refund proceedings. 10 CFR part 205, subpart V.

increasing its prices to pass through the additional costs associated with the alleged overcharges. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Northwest. *Id.*; see also *Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Schupback and Streitmatter Gas Company*, 14 DOE ¶ 85,186 (1986). In a recent Decision, the Temporary Emergency Court of Appeals affirmed the OHA's standards for a demonstration of injury, specifically upholding the method used to evaluate comparative market prices and thereby determine competitive disadvantage. *Behm Family Corp. v. DOE*, No. 8-22, slip op. (T.E.C.A. April 30, 1990). A claimant might also show that market conditions prevented it from passing through the alleged overcharges through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Northeast. *API*, 14 DOE at 88,295.

d. Spot Purchasers. If a claimant made only sporadic purchases of significant volumes of Northeast product, we will consider that claimant to be a spot purchaser. We will establish a rebuttable presumption that claimants who made only spot purchases from Northeast were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot market purchases from Northeast unless they were able to pass through the full amount of any price increases to their own customers. See *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Therefore, a firm which made only spot purchases from Northeast will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

(4) Consignees

As in previous Decisions, we will adopt the rebuttable presumption that consignees of Northeast refined petroleum products were not injured as a result of the alleged overcharges. See, e.g., *Jay Oil Co., Inc.*, 16 DOE ¶ 85,147 (1987). A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner or reseller, under which the refiner or reseller retained title to the products, specified the price to be paid by the

purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut the presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices." See *Gulf Oil Corp./C.F. Canter Oil Co., Inc.*, 13 DOE ¶ 85,388 at 88,962 (1986).

(5) Applicants Seeking Refunds Based on Allocation Claims

We may receive claims alleging Northeast allocation violations. Such claims would be based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. 10 CFR part 211. Claimants seeking refunds based upon an alleged allocation violation by Northeast must make a reasonable demonstration that their claim is well founded and non-spurious. *Marathon Petroleum Company/Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*). In past cases, applicants have been required to make this demonstration by establishing (i) that there existed a supplier/purchaser relationship between the claimant and the consent order firm during the relevant base period; (ii) that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211; (iii) that the claimant demanded the volumes; and (iv) that the claimant took some contemporaneous action with the agency to mitigate its injury. In addition, the claimant must establish that it was injured by the alleged violation and document the extent of its injury. *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984), *Texaco, Inc.*, 20 DOE ¶ 85,147 (1990).

In evaluating whether an allocation claim meets these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of contemporaneous complaints by the claimant, and we will look at any affirmative arguments made by Northeast in its defense. See *Marathon/RFI*, 19 DOE. To assess an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business with particular reference to the amount of product that it received from suppliers other than Northeast. In determining the amount of an allocation refund, we will utilize any information

that may be available regarding the portion of the Northeast consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimant. Claimants who make a reasonable and non-spurious demonstration of an allocation violation and show that they were injured by the alleged violation may receive a refund based on the profit lost as a result of their failure to receive the allocated product.⁹ However, since the Northeast Consent Order reflects a negotiated compromise and the consent order amount is less than Northeast's potential liability in these proceedings, we will prorate any allocation refund that would be disproportionately large in relation to the consent order fund.

D. Distribution of the Remainder of the Consent Order Funds Attributable to Northeast's Refined Product Sales

In the event that money remains after all refund claims from the Northeast refined product pool have been analyzed, those funds in that refund pool will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong., 2d Sess., Cong. Rec. H11319-21 (Daily E. October 17, 1986).

E. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined covered products sold by Northeast Petroleum Industries during the period March 6, 1973 through January 27, 1981. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number HEF-0580 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Northeast product, i.e., whether

⁹ If we receive numerous allocation claims, we may adopt a more general formula for calculating refunds based on alleged allocation violations.

is was a reseller, retailer, consignee, end-user, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that the applicant purchased from Northeast during the March 8, 1973 through January 27, 1981 refund period.¹⁰ If a claimant was an indirect purchaser of Northeast refined covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Northeast;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Northeast, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the refund period. If there was such a change in ownership, the applicant must submit a detailed explanation as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of the final order issued in the matter. If the action is still in progress, the applicant should briefly describe the actions and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund from the DOE or from Northeast Petroleum Industries in this or any prior Northeast Petroleum Industries special refund proceeding;

(10) A statement as to whether the applicant or a related firm has filed any other Application for Refund in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in this proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone

who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

Applications for Refund should be sent to: Northeast Petroleum Refund Proceeding, Case No. HEF-0580, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and postmarked within 90 days from the date of publication of this Decision in the Federal Register. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application in which the confidential information is deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Northeast Petroleum Industries pursuant to the Consent Order finalized on August 15, 1983, may now be filed.

(2) Applications for Refund from the Northeast Petroleum Industries refined product pool must be filed no later than 90 days after publication of this Decision in the Federal Register.

(3) Applications for Refund from the Northeast Petroleum crude oil pool must be postmarked no later than March 31, 1991.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, as provided in Paragraphs (5), (6), and (7) below, the total net current crude oil equity from the Northeast Petroleum subaccount (Consent Order No. 6COX00241Z) within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States.

(5) The Director of Special Accounts and Payroll shall transfer \$83,184 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer \$83,184 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer \$41,592 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-Claimants 3," Number 999DOE009Z.

(8) This is a final order of the Department of Energy.

Dated: June 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-14047 Filed 6-15-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3788-4]

Proposing Granting of an Exemption to Chemical Waste Management, Inc. for Continued Injection of Hazardous Waste Subject to the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 (HSWA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exemption to Chemical Waste Management, Inc., at the Vickery, Ohio facility, for the Continued Disposal of Hazardous Waste.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is proposing to grant an exemption from the ban on disposal of hazardous wastes through injection wells to Chemical Waste Management, Inc. (CWM), at the Vickery, Ohio facility. CWM may therefore continue to inject Resource Conservation and Recovery Act (RCRA) regulated hazardous wastes that include waste pickle liquor, multi-source leachate and other industrial wastes, if the exemption is granted. CWM submitted a petition to the USEPA under 40 CFR part 148, which allows any person to petition the Administrator to determine whether its continued injection of certain hazardous wastes is protective of human health and the environment. After a comprehensive review of all material submitted, the USEPA has determined that there is a reasonable degree of certainty that CWM's injected wastes will not migrate out of the injection zone over the next 10,000 years.

DATES: The USEPA is requesting public comments on today's proposed decision. Comments will be accepted until July 23, 1990. Comments received after the close

¹⁰ If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

of the comment period will be stamped "Late". A public hearing as well as an informational session prior to the hearing will be scheduled for this proposed action and notice will be given in a local paper and to all people on a mailing list developed by the Underground Injection Control (UIC) program. If you wish to be notified of the date and location of the public hearing and information session, please contact the person listed below.

ADDRESSES: Submit written comments, by mail, to: United States Environmental Protection Agency Region V, Underground Injection Control Section (5WD-TUB-9), 230 South Dearborn Street, Chicago, Illinois 60604, Attn: John Taylor.

FOR FURTHER INFORMATION CONTACT: James D. Paulson, Lead Petition Reviewer, UIC Section, Water Division, Office Telephone Number: (312) 886-1497.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA, (the USEPA has adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B); or

(2) When the owner/operator has demonstrated that there will be "No Migration" of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids would not migrate vertically upward out of the injection zone or to a point of discharge in a period of 10,000 years (40 CFR 148.20(a), 53 FR 28118 (July 28, 1988)).

EPA promulgated final regulations on July 28, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the injection prohibition (40 CFR part 148). At time frame of 10,000 years was specified for the petition demonstration, not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer period, and also allow time for geochemical transformations which would render the waste nonhazardous or immobile.

B. Facility Operation and Process

Hazardous aqueous wastes have been commercially disposed by deep well injection at the Vickery, Ohio facility, since June, 1976. A waste oil recovery operation known as Don's Oil and Road Oiling Service, began operations at the Vickery site in 1960. Ohio Liquid Disposal, Inc. (OLD) acquired the waste oil operation in 1970, and drilled the first injection well in 1972. Beginning in 1976, OLD injected wastes that had accumulated on-site in several impoundments as a result of the earlier waste oil recovery operation. After OLD injected waste oils for several years, the facility also began to accept industrial wastes, such as cutting oils, hydraulic fluids, solvents, waste pickle liquor, metal related industrial by-products, lime sludges, and chemical products from off-site sources for deep well disposal.

CWM has operated the Vickery injection facility since 1978, and continues to receive hazardous aqueous wastes from many sources and to dispose of these wastes in four injection wells. CWM receives waste generated by the iron and steel industry through steel finishing processes, and by industries that generate wastes through galvanizing, pickling, acid etching, electroplating, stripping, electro-polishing, cleaning, electro-machining and anodizing processes. In addition, CWM receives smaller volumes of wastes such as recycling operation process waters, incinerator scrubber waters, non-hazardous waters that include storm water from site remediation areas, and those generated from previous waste handling or disposal activities. Leachate that is collected from solid waste landfills constitutes another major portion of

waste that is disposed through deep well injection.

Chemically, the waste received for disposal consist of dilute acids, aqueous brines, slurries and oily wastewater. CWM receives both sulfuric and hydrochloric spent pickle liquors with spent sulfuric acid being predominant. Waste streams are processed for compatibility, composited and stored in several tanks and eventually injected into the deep wells. CWM has injected a total of approximately 730 million gallons of mixed hazardous wastes between 1976 and 1989, and during this period the annual injection volume has averaged 52 million gallons. The annual injection volume reached a maximum of 86 million gallons in 1983, but in the last 3 years (1987 to 1989) the annual injection volume has averaged 29 million gallons.

C. Waste Treatment Prior to Injection

Prior to the disposal of hazardous waste through deep well injection at the CWM facility, the individual waste components are processed and combined in several tanks so that pH and specific gravity of the composite meet Ohio Environmental Protection Agency (Ohio EPA) permit requirements. Waste processing begins with the initial receipt of the various waste streams and CWM, as required through permits and other binding legal agreements, completes appropriate screening procedures and preliminary compatibility checks prior to compositing wastes for injection. Screening procedures are detailed in the Waste Analysis Plan found in appendix B of the petition.

D. Submission

On January 19, 1988, CWM submitted a petition for exemption from the land disposal restrictions on hazardous waste injection under the regulations promulgated pursuant to the HSWA Amendments of RCRA (40 CFR part 148). This submission was reviewed for completeness and revised documents were received on December 4, 1989. Several subsequent supplemental submissions were made thereafter to resolve deficiencies. The total submission was reviewed by staff at the USEPA, the Ohio EPA, the Ohio Department of Natural Resources (ODNR) and, in part, by consultants hired by the USEPA to assist in their determination.

II. Basis for Determination

A. Waste Description and Analysis

The current injected waste is a composite of the various waste liquids

received by CWM from several offsite sources. Approximately 20 to 40 percent of the waste consists of waste pickle liquor (RCRA waste code K062) generated from the primary metal industries and identified by Standard Industry Classification (SIC) code #33. Some SIC code #33 streams are also received from industries that utilize non-pickling processes. Another major portion of the wastes are received from industries involved in the fabrication of metal products and are identified by SIC code #34. SIC code #34 wastes, along with some wastes with other SIC codes, exhibit characteristics listed under RCRA waste codes D002, and D004 through D011 and comprise approximately 20 to 40 percent of the injected wastes. CWM also receives leachate (RCRA waste code F039) collected from solid waste landfill disposal sites. These wastes are defined under 40 CFR part 261 as listed hazardous wastes due to corrosivity (i.e. pH is approximately 0.5) and toxic concentrations of chromium and lead, as well as other hazardous constituents. Some of the wastes also exhibit characteristics which are subject to other waste specific prohibitions. Collectively, these injected wastes are subject to injection restrictions that are effective August 8, 1990.

B. Well Construction and Operation

Although a total of seven Class I hazardous waste injection wells were drilled and constructed on the Vickery site between 1976 and 1981, CWM currently disposes of hazardous waste by injection into four specifically designed deep wells referred to as Wells #2, #4, #5, and #6. Injection wells, identified as #1A and #3 were removed from service and plugged in December, 1987, and July, 1987, are respectively. Well #1 was originally plugged in July 1980, and was re-plugged subject to more stringent requirements in April, 1986. These three wells were plugged and abandoned, according to procedures approved by Ohio EPA, such that geologic formations are sealed and the underground sources of drinking water (USDWs) are not and will not be contaminated with injected wastes. USDWs are geologic formations, that as aquifers, can provide public water supplies and contain less than 10,000 milligrams per liter (mg/l) total dissolved solids. CWM's four operational injection wells were all constructed with three strings of casing and each casing string was cemented to seal the geologic formations that were penetrated by it (See Figure 1). A smaller diameter pipe (or tubing) with a packer near the base is installed inside the longstring casing in each of the four

operating wells and provides a fluid-filled annulus that is monitored.

Injection well operations are continuously monitored by the facility to check the performance of the well components and thereby ensure safe disposal. CWM is required by Ohio EPA, through permits, to maintain an adequate monitoring system. The monitoring system at this facility provides that alarms will be triggered and injection equipment shut off if injection or annulus pressure falls outside of permitted levels. The maximum permitted injection pressure, 790 pounds per square inch gauge (psig) at the surface, provides insufficient energy to initiate or propagate fractures in the injection zone and in the confining zone. This was justified by calculations documented in section 11 of the petition that determined the minimum pressures necessary to initiate new or propagate existing fractures as a result of injection into the Mt. Simon Sandstone, and these were found to be realistic. The injection pressure has averaged below 700 psig during the last 2 years.

The annulus between the injection tubing and the longstring casing is also continuously monitored so that the mechanical integrity of the well materials can be assured. The annulus is filled with diesel oil and is maintained with a positive differential pressure that must be at least 50 psig greater than the corresponding injection pressure, according to the permits. This positive differential pressure on the annulus is maintained so that, if leakage in the tubing occurs due to a loss of mechanical integrity, injection fluid will not enter the annulus. If pressure falls near the 50 psig differential to injection pressure, the alarm system is triggered and injection is shut off.

Numerous repairs or workovers have been performed on all of CWM's injection wells to correct leaks in the well materials and to maintain mechanical integrity as indicated in section 15 of the petition document. These workovers have included replacement of tubing, packers, and also extensive operations in which liners were installed to remedy defects in the longstring casing or as replacement for a previously installed liner. The CWM injection wells were upgraded after 1984 to ensure that all waste fluid is injected into the Mt. Simon Sandstone as required by permits.

C. Mechanical Integrity Test (MIT) Information

USEPA regulations in 40 CFR 148.20(a)(2)(iv) require that satisfactory MITs be performed within 1 year prior to petition submission and also within 1 year of USEPA's petition decision.

The four CWM injection wells were tested in 1989 and successfully demonstrated mechanical integrity. The test results confirmed the positive results recorded on the continuous monitoring equipment for each well.

D. Site Description

The CWM facility in Vickery, Ohio, covers an area of approximately 500 acres with operations on approximately 100 acres. The facility includes two large surface impoundments, a large waste stockpile associated with the closure of some waste storage ponds, storage and treatment tanks, four operating injection wells, three plugged injection wells, and office and laboratory facilities. The CWM site is located just off the Ohio Turnpike (I-80), slightly over 5 miles east of Fremont, Ohio, and 4.5 miles southwest of Sandusky Bay, Lake Erie.

1. Regional Geology

The CWM site lies on the eastern flank of the Flindley Arch, a regional structural feature, that separates the Michigan Basin to the northwest from the Appalachian Basin to the southeast. The facility is underlain by approximately 50 feet (ft.) of unconsolidated glacial deposits that mantle the underlying carbonate bedrock. Approximately 2900 ft. of sedimentary rocks which dip gently southeastward are encountered below the glacial materials. As shown in Figure 1, the sedimentary section includes limestone, dolomite, shale and sandstone rocks, which in turn, overlie the granitic basement rocks. The Mt. Simon Sandstone is used for waste disposal and is encountered at the bottom of the sedimentary sequence. The USDWs beneath the CWM site extend to a depth of approximately 720 ft. and are separated from the underlying Mt. Simon Sandstone and four overlying formations designated as the "injection zone" by approximately 1620 ft. of predominantly dense or nearly impermeable rock, that includes, in ascending order, the Wells Creek, Black River, Trenton and Cincinnati Group intervals.

CWM conducted a geophysical investigation which involved seismic reflection methods, to further define the geology within a 5-mile radius of the site and to evaluate for structural features that would include faults. The investigation was extensive and included 59 miles of seismic data and provided seismic cross sections (time profiles) that cross the Vickery site in approximately north to south and east to west directions. CWM began the investigation after an agreement with Ohio EPA in October of 1989. Evaluation

of available seismic results indicates an anticlinal feature in the deeper sedimentary rock layers beneath the Vickery facility that extends north and south for several miles. This feature is 1 to 2 miles in width and involves arched rock layers that overlie a low relief ridge which developed on the granite basement. The CWM injection wells were drilled in the locale of this anticlinal feature and evaluation of the well information showed as much as 40 ft. of relief on the basement, locally.

Submitted information which includes geological evaluations and seismic reflection results, at this point indicates that the Mt. Simon Sandstone and overlying rock layers are free of a transmissive fault or fracture which could allow fluids to move between formations. However, further confirmation of the absence of a transmissive fault or fracture and the integrity of the Mt. Simon Sandstone and overlying rock layers is deemed desirable in view of the anticlinal feature described above. Therefore, CWM will be required to provide additional evaluations of the seismic reflection data within a 5-mile radius of the CWM facility as a condition of any final exemption issued.

In terms of seismicity, the region is generally stable and is located in an area of minor risk as described in section 9 of the petition. Only small intensity seismic events, essentially non-damaging, have been recorded within a 75-mile radius of the site. Prior to the initiation of CWM's injection activities at the Vickery facility, two earthquakes were recorded in the southwestern part of Sandusky County in 1974 and 1975. These events had low intensity, II and IV on the Modified Mercalli Scale, and the epicenters were approximately 20 to 25 miles from CWM's facility. The highest intensity for a seismic event within a 75-mile radius of CWM's facility was recorded in 1961, with an intensity of V on the Modified Mercalli Scale. The 1961 seismic event had an epicenter approximately 35 miles southwest of CWM's facility. Should an earthquake of similar intensity or comparable magnitude occur closer to CWM in the future, it would not be expected to cause structural damage to the injection well or a release of waste from the injection zone.

The injection activities at the CWM facility have not induced earthquakes, measurable by the existing network of seismographs which are operated by the University of Michigan under contract to the United States Nuclear Regulatory Commission. The network includes seismic monitoring stations that can detect an earthquake at the CWM

facility of a magnitude of 2.0 or greater on the Richter Scale.

2. Injection Zone Description

The injection zone must have appropriate physical rock properties, sufficient thickness, continuity, and be free of known transmissive faults or fractures so that waste fluids are prevented from migrating into USDWs. The suitability of the injection zone for continued disposal of waste at the site was based on an extensive review of published literature, geological evaluations of more than 800 ft. of rock core recovered from the injection zone formations, and analysis of laboratory core testing data, geophysical open hole logging information, and geologic maps and cross sections. The injection zone consists of 584 ft. of rock section (thickness referenced to Well #5) that includes five geologic formations (See Figure 1). The lowermost unit is the Mt. Simon Sandstone, which in ascending order is overlain by the Rome Formation, the Conasauga Formation, Kerbel Formation and the Knox Dolomite. The injection zone formations are considered continuous within the site area based on the available geological information.

At the CWM site, the injection interval, or the interval into which waste is directly emplaced, is the Mt. Simon Sandstone which is encountered at 2,791 feet below the surface and has a thickness of 139 ft. (all formation depths and thicknesses will be referenced to Well #5). The Mt. Simon Sandstone has an average gross thickness of 121 ft. within a 5-mile radius of the site and reaches a minimum thickness of 84 ft. in the vicinity of Well #3. The uppermost 30 ft. of the injection interval receives the bulk of the wastestream volume, based on the radioactive tracer surveys (RTSs). The Mt. Simon consists primarily of well sorted, very fine to coarse grained sandstone as indicated by core evaluations, and includes both quartz and feldspar grains, with dolomite and clay as accessory minerals. Both the permeability and porosity of the injection interval are suitable for waste injection as evidenced by analysis of core analyses which shows that the injection interval has an average horizontal permeability (to air) of 42 millidarcies (md) and an average porosity of 14 percent. The upper part of the injection zone, the "containment interval", is 445 ft. thick and includes the Rome, Conasauga, Kerbel, and Knox formations. The containment interval was cored in CWM's wells and an extensive amount of porosity and permeability measurements were obtained as detailed below. The Rome Formation

which is encountered at a depth of 2582 ft. directly overlies the Mt. Simon and consists of three lithologic layers: A basal dolomite that is 64 ft. thick, a middle dolomitic sandstone that is 40 ft. thick, and an upper dolomite that is 105 ft. thick for a total thickness of 209 ft. The basal dolomite layer is the first barrier (aquitard) to the vertical flow of the injected waste. It has a low average porosity (4 percent), an average horizontal permeability (0.6 md) and a very low average vertical permeability (5×10^{-5} md). The middle dolomitic sand layer has a very fine to fine grained matrix that contains an extensive amount of dolomite. This layer functions as the first "bleed-off" zone which relieves fluid pressure laterally above the injection interval due to its higher average horizontal permeability (10 md) and porosity (10 percent). The average vertical permeability of this middle layer is 1×10^{-2} md. The upper dolomite has an average porosity of 5 percent, an average horizontal permeability 1 md, and an average vertical permeability of 3×10^{-3} md and functions as an aquitard or a barrier to vertical migration of fluids.

The Conasauga Formation overlies the Rome Formation and is encountered at a depth of 2465 ft. with a total thickness of 117 ft. Analysis of geophysical logging information and rock core evaluations indicate that the Conasauga consists of sandstone, siltstone and shale layers which have been, in some cases, extensively dolomitized. A lower interval consists of very fine to fine grained sandstones and an upper interval consists of alternating silty and very fine grained sandstones and shales. The lower interval has an average porosity of 13 percent, an average horizontal permeability of 70 md and an average vertical permeability of 3×10^{-3} md. Permeability is sufficient in the lower interval so that pressure will transmit laterally and the interval can function as a bleed-off zone. The upper interval, which contains shale layers, will further inhibit vertical flow of the injected waste.

The 61 ft. thick Kerbel Formation overlies the Conasauga Formation and is encountered at a depth of 2404 ft. This unit has sufficient average porosity (12 percent) and average horizontal permeability (45 md) to function as another pressure bleed-off zone. The average vertical permeability is 5×10^{-2} md. The Kerbel Formation consists of a fairly homogeneous, dolomitic sandstone and ranges from very fine grained at the base to medium grained at the top. The formation has a very low

clay content, which ranges from a trace to 3 percent, and also contains abundant dolomite that has tended to reduce overall porosity.

The Knox Dolomite which is 58 ft. thick overlies the Kerbel and is encountered at 2346 ft. The Knox consists of dolomitic sandstone near the base and dolomite higher in the unit. This formation has an average porosity of 9 percent, an average horizontal permeability of 40 md, and an average vertical permeability of 1×10^{-4} md.

Taken together, the dolomite and dolomitic sandstone rocks comprising the containment interval include rock layers that are sufficiently impermeable and layers that function as pressure bleedoff zones to ensure that injected waste will remain in the injection zone.

3. Confining Zone Description

The confining zone must be (1) laterally continuous, (2) free of transecting, transmissive faults or fractures over an area sufficient to prevent fluid movement and, (3) have sufficient thickness, lithologic and stress characteristics to prevent vertical propagation of fractures. The confining zone at the CWM site extends from the top of the Knox Dolomite to the top of the Black River Limestone, and has a total thickness of 542 ft. It includes the Wells Creek and the Black River formations and these units are laterally continuous based on available geological information.

The Wells Creek Formation is reached at a depth of 2342 ft., immediately overlies the Knox Dolomite and consists of a calcareous blue gray to green shale that is 4 ft. thick. The Black River Limestone is encountered at a depth of 1804 ft. and has a thickness of 538 ft. Evaluation of geophysical logging information and well cuttings descriptions for the CWM Vickery site and the core analysis results from a test well, drilled by ODNr in Seneca County (M. & B. Asphalt Company, No. 1 Well) indicates that the Black River Limestone has very low porosity and permeability. The ODNr's Seneca County test well was drilled 15 miles southwest of the facility and evaluation of core data indicates that the Black River Formation has an average porosity of 2 percent, an average horizontal permeability (to air) of 1×10^{-3} md, and an average vertical permeability (to air) of 5×10^{-4} md.

Taken together, the confining zone has sufficient thickness and very low permeability which will preclude any vertical migration of injected fluids above the injection zone. The confining zone is further separated from the lowermost USDW by one or more sequences of permeable and less permeable strata that will provide added layers of protection by providing additional confinement (low permeability units) and allowing

pressure bleed-off (high permeability units). Bleed-off zones or buffers may exist in the Queenston Shale, in other zones within the Cincinnati Group, and in the Trenton Limestone.

4. Geochemical Conditions

The characteristics of the fluids and lithologies in the injection and confining zone at the CWM site are adequately described in the petition for purposes of determining compatibility with the injected wastestream. Rock cores recovered from the injection zone in CWM's wells and from the confining zone in ODNr's Seneca County test well were studied and analyzed as indicated above. The compatibility of the Mt. Simon Sandstone to various types of wastes was evaluated by CWM and these evaluations included measurement of permeability changes after exposure to wastes.

While this information indicates an acceptable level of compatibility, releases of acidic injectate prior to 1984 which entered dolomite and dolomitic sandstone rocks within the containment interval through defective casings in several of CWM's injection wells would indicate that further confirmation of the conservative nature of the physical rock property values used as input parameters is deemed desirable. Therefore CWM has agreed to perform this laboratory core testing to measure changes in rock properties due to exposure to wastes representative of those injected. Therefore CWM has agreed to perform laboratory core testing on CWM's rock cores that were recovered from the containment interval and CWM will implement this testing program once the exemption is granted.

5. Area of Review

The area of review (AOR) is the area within which the petitioner must identify all wells which penetrate the confining zone and demonstrate that they have been properly completed or plugged and abandoned. For the CWM facility, the AOR encompasses an area with a radius of 3.5 miles, based on a conservatively determined cone of influence. The cone-of-influence calculation indicates the radial extent of a pressure build-up caused by injection that is sufficient to drive fluids into a USDW. An extended area involving a 5-mile radius was searched for wells. Detailed records exist for 10 wells within the 5-mile radius that penetrated the confining zone; eight of these wells penetrated the injection interval and seven are injection wells drilled at the CWM site. Three artificial penetrations were the result of unsuccessful drilling for oil and gas reserves between 3 and 4 miles from the facility. Each of these three wells were properly plugged and abandoned.

In addition, three other wells have been identified which were drilled approximately 2.5 to 3.5 miles north-

northwest of the facility prior to 1915 based on information from long term area residents. Two of these three wells may have partially penetrated the upper part of the confining layer. ODNr performed proper plugging operations on two of these wells and this included a well that may have reached a portion of the confining zone. The third well was also drilled to the upper part of the confining layer and was properly plugged back to recover fresh water from shallower depths. Since the non-operating CWM wells were also properly plugged, no corrective action under 40 CFR 146.64 is required for this facility.

E. Model Demonstration of No Migration

The demonstration of no migration of hazardous constituents from the injection zone at the CWM site involves the use of a mathematical code known as the Sandia Waste-Isolation Flow and Transport Model II (SWIFT II). This family of models was used to predict the build-up of pressure and the vertical transport of waste from the injection wells. Lateral transport of waste is modeled using analytical methods to determine the extent of the area that the plume will occupy. The SWIFT II numerical code has been widely used and extensively verified, as reported in various Federal publications. The long history of development and the successful use of SWIFT II for sites similar to the CWM site provide confidence that the model is well validated and appropriate for use at this site.

1. Model Development and Calibration

The CWM model was developed by incorporating hydrogeological data for the site and the surrounding areas into a conceptual model. These data were derived from well logs, cores, well tests and published literature. The model contains seven geologic formations that extend from the lower part of the Black River Formation to the base of the Mt. Simon Sandstone. These geologic formations were further subdivided into as many as 33 stratigraphic layers in some parts (or submodels) of the conceptual model. A calibration exercise was used to refine estimates of hydrogeologic parameter values that were determined from the well test data for the Mt. Simon Sandstone. The Mt. Simon was assumed to be laterally infinite in this calibration, and this was justified by results of analytical modeling of well testing data which confirm an absence of hydraulic boundaries. The calibration exercise reproduced the pressure response of the injection interval in CWM's well measured during well testing that occurred in August and September, 1987,

and for short segments of the injection record during April and June of 1986, and January and April 1987. This exercise has shown that the parameter values, taken as a group, adequately represent the injection interval. The parameter values for the Mt. Simon Sandstone included an average permeability-thickness product of 4200 md-ft. and a porosity of 15 percent. Skin factors varied between wells due to the differences in well stimulations and ranged from -3.5 to +7.5. These estimates are realistic. Reasonably conservative values were chosen for all parameters used to model injection-induced pressure and waste transport; details of this model are discussed below.

Two simulation time periods were considered in the demonstration: one involving a combined historical and 20-year future operational period and a second involving a 10,000 year post-operational period. The waste migration was modeled in two ways: The pressure build-up and plume movement were calculated both laterally within the Mt. Simon Sandstone and vertically into the overlying containment formations.

2. Pressure Distribution and Cone of Influence

Vertical pressure dissipation occurs through some rock layers that are above the Mt. Simon Sandstone and this has an important effect on lateral pressurization during the operational period. To account for this effect, a vertical pressure dissipation factor was used in this simulation as a boundary condition to characterize the position and structure of the cone of influence, and to calculate lateral pressurization. The factor (7×10^{-6} md/ft.) was determined from the quotient of a harmonically averaged vertical permeability (2×10^{-3} md) and the thickness of the lower three quarters of the containment interval (top of the Mt. Simon Sandstone to the top of the Conasauga Formation - 326 ft.). This simulation indicated that the modeled pressure build-up is greatest near the wells and declines to less than 161 psi, which is the pressure necessary to move fluid upward from the Mt. Simon into the lowermost USDW, at a distance of approximately 3.5 miles. If injection is maintained at or near the present rate, as expected, then this distance, and the maximum pressure build-up, will be much smaller.

3. Short-term Lateral Migration

The distance of lateral migration of wastes during the operational period was calculated by accounting for volumetric displacement under

maximum flow rate conditions. The waste plume is assumed to migrate laterally within the uppermost 30 ft. of the Mt. Simon injection interval, which has a porosity of 15 percent. This assumption was substantiated by the results of radioactive tracer surveys (RTSs) on the CWM wells; the porosity value was determined from core data and log analysis. Thus, use of these parameters is realistic. Model results indicate that the wastes will migrate laterally within the Mt. Simon approximately 1.2 miles during the 20-year operational period. Hydrodynamic dispersion and geologic heterogeneities may be expected to conservatively increase the distance to the waste plume boundary, based on concentrations lower than health-based limits. A conservatism factor of 3 was imposed on injected volume to account for these effects during the operational period. This calculation extends the plume radius to 2.0 miles at the end of the operational period.

4. Long-term Lateral Migration

During the 10,000-year post-operational period, the combined waste plume will migrate due to the natural flow of ground water in the Mt. Simon Sandstone, and to hydrodynamic dispersion. A maximum ground water flow velocity in the Mt. Simon Sandstone of 4.5 inches per year, based on published literature estimates, would result in an additional drift of the combined waste plume of 0.71 miles in 10,000 years. Hydrodynamic dispersion during the post-operational period will result in, at most, an additional migration of 1.2 miles. This calculation is based on a dispersivity value of 40 ft., a diffusion coefficient of 2×10^{-9} square meters per second, and a waste boundary defined by a nine order reduction in the concentration of waste constituents or to below health based limits (See part III, condition #3). At this distance, the waste will lose any hazardous characteristics, such as corrosivity. Therefore, using reasonably conservative values, the maximum predicted lateral migration of the combined waste plume at the CWM site is 3.9 miles in 10,000 years. The maximum area covered by the future waste plume is well within the 5-mile radius of the well search.

5. Short-term Vertical Migration

The driving force for vertical migration of fluids into the overlying strata is provided by the elevated pressure in the injection interval during the operational period and by molecular diffusion during the 10,000 year post operational period. Migration or

permeation of the waste will be greatest immediately adjacent to the wellbore where the pressure build-up is the largest. Maximum vertical transport at the CWM site is dependent mainly on the injection pressure and the permeability of the formations which overlie the injection interval.

The modeling of vertical waste migration included seven geologic formations: Black River, Wells Creek, Knox, Kerbel, Conasauga, Rome, and Mt. Simon. A constant pressure was assumed as a boundary condition for the top of the lower 250 ft. of the Black River Formation and this unit is more than three orders of magnitude less permeable than the Mt. Simon Sandstone. In the simulation, the Black River Limestone was conservatively assigned a vertical permeability value of 1.0×10^{-2} md. This value is conservative because it is more than two orders of magnitude larger than core measured values of 5.4×10^{-4} md from ONDR's test well in Seneca County, Ohio. The bottom of the Mt. Simon Sandstone was assumed to represent a no-flow boundary in simulation. These are reasonably conservative assumptions based on core data. For the operational period, the following data, along with others, were used to predict vertical waste migration in the injection zone: A specific gravity of 1.085, a viscosity of 1 centipoise (cp), and vertical permeabilities of 5×10^{-2} md for the lower and upper Rome dolomite layers. These permeabilities are extremely conservative because laboratory tests on rock cores indicated vertical permeabilities of 4.7×10^{-5} md the lower dolomite layer and 2.5×10^{-5} md for the upper dolomite layer. Actual injection rates were used to model 13 years of historical well operations. The modeled injection rate for the 20-year future well operations represents a total combined rate of the four injection wells (#2, #4, #5, and #6) simultaneously operating at maximum permitted injection pressure (790 psi at the surface) 24 hours per day and 365 days each year for the next 20 years. A rate of 240 gallons per minute (gpm) is used initially in this simulation and corresponding volumes are conservative and far exceed actual conditions based on the average annual injection volume for the last 3 years. This submodel determined waste movement due to pressure driven flow and hydrodynamic dispersion during the operational period. Vertical migration of waste was estimated to be no more than 290 ft. above the top of the injection interval at the end of operations, using a permeability value of 5×10^{-2} md for

the lower and upper Rome dolomites and a dispersivity value of 5 ft. This estimate is reasonably conservative and over-predicts waste transport because (1) it is based on a modeled injection rate much higher than actual injection rates and maximum permitted injection pressures of 790 psig at surface; (2) the edge of the waste plume was defined as the point where the concentration of all hazardous constituents reached a nine order of magnitude reduction in concentration, or became much lower than health-based limits for almost all of the waste constituents (See part III, condition #3); (3) the well was modeled to inject continuously, whereas actual injection occurs in pulses that allow the injection pressure build-up to dissipate between injection events; and (4) the permeability values for the lower and upper Rome dolomite layers are higher than the rock core measurements. This projection places the waste plume movement well within the 445 ft. thickness of the containment interval during the operational years.

6. Long-term Vertical Migration

During the post-operational period, molecular diffusion is the primary transport mechanism for the vertical migration of waste. Geologic literature and log analysis were used to determine a reasonably conservative tortuosity of 0.067 (based on a harmonic mean) for the containment interval and a coefficient of molecular diffusion of 2×10^{-9} square meters per second. Based on these values and a waste plume boundary defined as the point where the concentration of all hazardous constituents reached a nine order of magnitude reduction in concentration or became lower than health-based limits (See part III, condition #3); the maximum vertical transport during the 10,000 year post-operational period is an additional 130 ft. for the waste. Therefore, the total vertical migration of wastes will be 420 ft. (290 plus 130 ft.) above the top of the injection interval. Thus, wastes will be contained within the Conasauga Formation during the operational period, and with the Knox Dolomite during the 10,000 year post-operational period.

7. Sensitivity of Vertical Migration Modeling

The reasonably conservative nature of the vertical waste migration simulation that is presented in this draft petition decision was further assured through comparisons of other simulations where greater dispersion length was used and vertical permeability values for the

Rome Formation were higher by orders of magnitude. In addition, some of these simulations accounted for a natural downward groundwater flow, as evidenced by drill stem test results performed during the drilling of three of CWM's wells, that functions to reduce the upward migration of waste during the post-operational period. This sensitivity analysis confirms that the vertical waste migration prediction as described above is reasonably conservative.

8. Synopsis

The results of the modeling effort presented above demonstrate, to a reasonable degree of certainty, that the hazardous constituents injected at the Vickery site will not migrate vertically out of the injection zone nor laterally to a point of discharge, within a 10,000-year period.

F. Quality Assurance and Quality Control

CWM and its consultants have demonstrated that adequate quality assurance and quality control plans were followed in preparing the petition. CWM has followed appropriate protocol for locating records for penetrations in the area of review, for collection, analysis, and review of geologic and hydrogeologic data, for waste characterization, for analyzing the confidence of various types of technical data, and for all tasks associated with the modeling demonstration.

CWM has conducted an extensive review of geological literature and utilized appropriate sources of geological information. The characterization of geology and the related technical data for the injection zone were supported by extensive evaluations and measurements on rock cores and geophysical logging information from CWM's injection wells and other wells. Other geological evaluations included microscopy work, x-ray diffraction analysis and scanning electron microscopy analysis of rock samples. The discussion of the geology and technical data for the confining zone were based on well cuttings descriptions and geophysical logging data obtained from CWM's wells, and supplemented with geological evaluations and measurements from cores recovered from ODNR's research well in nearby Seneca County, Ohio.

III. Conditions of Petition Approval

General conditions of this exemption are found at 40 CFR part 148. In addition, as a condition of granting this

exemption to the ban on injection of certain hazardous wastes, the USEPA requires that the following conditions be met:

(1) The combined average daily injection rate for Well Numbers 2, 4, 5, and 6 may not exceed 240 gpm;

(2) Waste may be injected only into the Mt. Simon Sandstone and only through Well Numbers 2, 4, 5, and 6;

(3) Injection pressure shall be limited to a maximum of 790 psig at surface and the injected waste shall not have a specific gravity of more than 1.085;

(4) Waste constituents designated on Table B of CWM's submittal dated March 19, 1990, which is part of the administrative record, may not be injected at concentrations (in mg/l) exceeding the maximums specified on the subject table;

(5) Groundwater monitoring must be fully implemented, in accordance with the schedule and conditions found in the administrative record for this decision;

(6) Laboratory Core Testing of the injection zone formations must be fully implemented, in accordance with the schedule and conditions found in the administrative record for this decision;

(7) CWM shall conduct additional evaluations of existing seismic reflection data to confirm the absence of faults within the AOR. Within 60 days after an exemption is granted, CWM must submit an approvable plan to evaluate time profiles from intermediate processing stages, to enhance shallow data, to justify seismic processing adjustments, and to investigate the possibility of a fault(s) bounding the west side of the anticline. No later than 180 days after an exemption is granted, requested seismic information and a report summarizing the evaluations shall be submitted to USEPA for review. If necessary, CWM shall perform selected re-processing of time profiles, incorporate other geophysical information, perform any requested geophysical investigations and hydrogeological testing and shall submit additional results and reports; and

(8) The petitioner shall be in full compliance with all requirements set forth in the UIC permits issued by Ohio EPA for operation of Well Numbers 2, 4, 5, and 6.

Conditions 1, 2, 3, and 4 are being incorporated into existing UIC permits for the wells by permit modification.

Dated: June 8, 1990.

Dale S. Bryson,

Acting Director, Water Division, Region V,
U.S. Environmental Protection Agency.

BILLING CODE 6560-50-M

CHEMICAL WASTE MANAGEMENT, INC.

Vickery, Ohio

DISPOSAL WELL #5 SCHEMATIC

WITH

STRATIGRAPHIC COLUMN

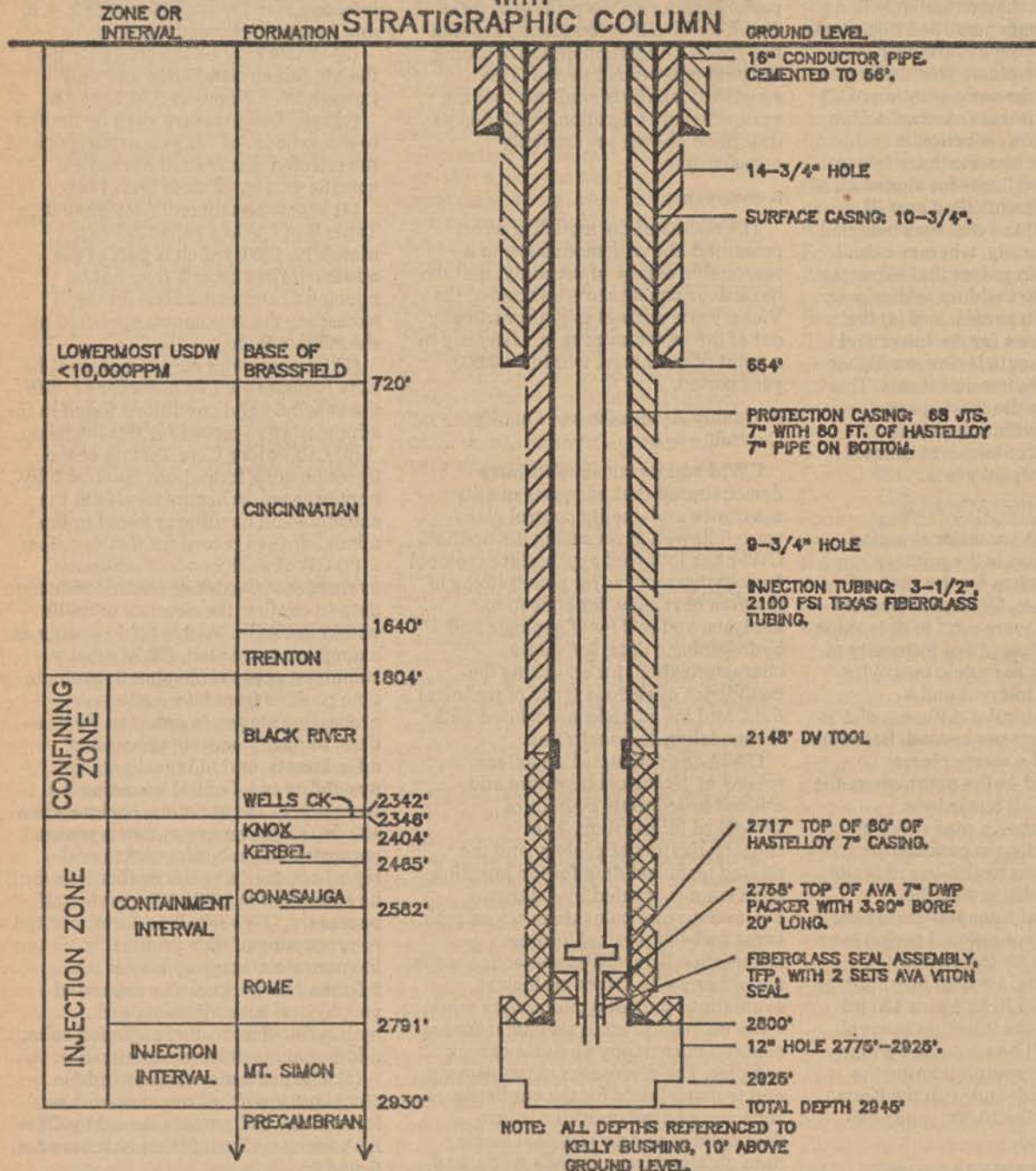


FIGURE 1

[OPTS-400047; FRL-3740-41]

Sulfuric Acid; Toxic Chemical Release Reporting; Community Right-To-Know**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Denial of petition.

SUMMARY: EPA is denying a petition to delete sulfuric acid from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. The denial is based on the EPA's conclusion that sulfuric acid is reasonably anticipated to cause human chronic health effects and, as such, should remain on the list of toxic chemicals that are subject to reporting under section 313.

FOR FURTHER INFORMATION CONTACT:

Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M Street SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC, and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:**I. Introduction****A. Statutory Authority**

The response to the petitions is issued under section 313(d) and (e)(1) of title III of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA" or "the Act"). Title III of EPCRA is also referred to as the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the *Federal Register* of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

II. Description of Petitions

On December 12, 1989, EPA received a petition from American Cyanamid to delete sulfuric acid from the section 313 list of toxic chemicals. On March 7, 1990, a second petition for the same chemical

was received from Ecolab, Inc. and was incorporated by EPA into the existing petition review process. Both petitions requested that EPA delete sulfuric acid from the list of chemicals reportable under section 313 due to an absence of significant adverse human health and environmental toxicity concerns. On June 4, 1990, American Cyanamid withdrew their petition.

III. EPA's Toxicity Concerns for Sulfuric Acid

Sulfuric acid is a strongly acidic, corrosive substance, and is acutely toxic to all human tissue. The extent of tissue damage is dependent upon concentration and duration of exposure, and can range from a mild, transient irritation, to corrosion, chemical burn, and, in extreme and isolated cases, death. Reported cases of acute toxicity from ingested sulfuric acid were of an unusual origin, from either deliberate or accidental ingestion of sulfuric acid-containing products. EPA recognizes that, although toxicity in these cases is often severe, exposures of this type do not occur during normal manufacture, processing or use of sulfuric acid.

Only limited data are available on toxic effects of long-term human exposure to sulfuric acid. In 1984, EPA estimated an acceptable air exposure concentration of 0.07 mg/m³ for sulfuric acid. Several more recent studies indicate that sulfuric acid aerosols at levels as low as 0.02 to 0.04 mg/m³ may cause significant effects on lung function in humans. Effects noted include increased risk of chronic bronchitis in smokers and reduced tracheobronchial clearance rates. Other studies indicate that sulfuric acid aerosols at concentrations as low as 0.04 mg/m³ may act synergistically with copollutants such as ozone, NO₂, and metal particulates in causing decreased pulmonary diffusing capacity and bronchial hypersensitivity.

None of these studies are conclusive, but they strongly suggest significant toxic effects of sulfuric acid at exposure levels lower than previously thought to present a risk to human health. Although ambient atmospheric concentrations of sulfuric acid are ordinarily at least 100-fold lower than concentrations suspected of having significant adverse effects, ambient concentrations of 0.02 to 0.04 mg/m³ are occasionally observed, and studies of early air pollution episodes suggest that levels in excess of 0.1 mg/m³ can occur under extreme circumstances.

In particular, EPA is becoming increasingly concerned about the health effects of atmospheric acid aerosols, of which sulfuric acid is the major

atmospheric component. Exposures to acid aerosol mixtures have been implicated in causing and exacerbating a variety of respiratory ailments. As noted above, exposures to high levels of sulfuric acid aerosols lead to bronchoconstriction, and at lower levels, can lead to long-term diminishment in the rate of clearance of the tracheobronchial and pulmonary regions. Although the health effects of mixtures of sulfuric acid in aerosols is an area of toxicology which, to date, has not been thoroughly explored, several researchers have speculated that long-term exposure to acid aerosols containing sulfuric acid could lead to chronic lung disease.

IV. Explanation of Denial

EPA considers the evidence of chronic health effects associated with exposure to sulfuric acid to be compelling enough to warrant continued reporting under section 313. Although EPA recognizes the limitations of the available data, the Agency is nonetheless concerned about the apparent finding of significant chronic health effects at exposure levels lower than what is currently regarded as safe.

This concern is amplified by the extent to which sulfuric acid is used by industry, and released to the environment. Sulfuric acid is the largest volume commodity chemical in the U.S. (and in the world), with a production of 79 billion pounds in 1989. For 1987 reporting under the section 313 Toxic Chemical Release Inventory (TRI), firms submitted almost 5,000 reports for sulfuric acid, 3,000 of which reported non-zero releases or transfers, making sulfuric acid the most frequently reported chemical within TRI. Total volume of TRI releases and transfers was 642 million pounds.

The principal pathways for the release of sulfuric acid to the environment include air emissions (19.4 million pounds in 1987), surface water discharges (77.5 million pounds), and underground injection of dilute solutions (136 million pounds). The latter process constitutes the major disposal pathway for this chemical. The extent to which these releases contribute to sulfuric acid aerosols is not well characterized. Although most sulfuric acid aerosols are presumed to result from atmospheric reactions involving sulfur oxides, direct industrial releases of sulfuric acid may make a significant contribution.

Weighing the relevant factors of: (a) Evidence of chronic health effects from exposure to sulfuric acid through inhalation (b) concern that lower than previously anticipated sulfuric acid

concentrations pose health concerns (c) the potential contribution of industrial releases of sulfuric acid to acid aerosols, an area of increasing EPA concern, and (d) the widespread use and release of sulfuric acid, EPA has concluded that removing sulfuric acid from the list of section 313 chemicals cannot be justified.

Dated: June 11, 1990.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 90-14011 Filed 6-15-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-211026; FRL 3739-3]

Response to Petition to Initiate Proceeding to Revise Financial Assurance Criteria and Mechanisms for Commercial Storage Areas of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of TSCA section 21 petition.

SUMMARY: This notice responds to a citizen's petition submitted by the National Solid Wastes Management Association (NSWMA) under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620) to initiate a rulemaking proceeding to amend the financial responsibility requirements promulgated under TSCA section 6(e) for persons who store polychlorinated biphenyls (PCBs) for disposal. EPA is denying the petition under section 21 of TSCA because the concerns that NSWMA raises in connection with financial assurance for PCB commercial storage facilities, as required by the recently promulgated PCB Notification and Manifesting Rule, are a part of the larger issue of amending the financial assurance requirements under the Resource Conservation and Recovery Act (RCRA), which the PCB rule have, in part, adopted. To unilaterally amend TSCA's financial assurance requirements for PCB storage facilities would destroy the consistency that currently exists between the TSCA and RCRA financial assurance programs and that was the rationale for the PCB rule's adoption of RCRA's financial assurance mechanisms in the first place.

ADDRESSES: Copies of the petition and all related information are located in the TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC, 20460. They are available for review and copying from 8

a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: In this notice, EPA is responding to the petition of NSWMA under section 21 of TSCA regarding financial assurance requirements for commercial storers of PCB waste.

I. Background

A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of, among other things, rules imposing substantive controls on chemical substances or mixtures under section 6 of TSCA. Section 21(b)(3) requires that EPA grant or deny a petition within 90 days of its filing.

If EPA grants a section 21 petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, the reasons for denial must be published in the *Federal Register*.

If EPA denies a petition within 90 days of the filing date, or fails to grant or deny within the 90-day period, the petitioner may commence a civil action in Federal district court to compel EPA to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90-day period if EPA fails to grant or deny the petition within that period.

B. Summary of Petition

On February 16, 1990, NSWMA petitioned EPA under section 21 of TSCA, section 7004(a) of RCRA, and section 553(e) of the Administrative Procedure Act (APA), to initiate rulemaking to amend the financial responsibility requirements promulgated under TSCA, RCRA, and other EPA-administered statutes. While endorsing the general goal of financial assurance, NSWMA states that flaws in the RCRA Subtitle C financial assurance requirements, the cumulative effect of additional financial assurance requirements in RCRA Subtitle I and proposed Subtitle D programs, the Safe Drinking Water Act's (SDWA) underground injection well program, and the TSCA PCB commercial storage approval program, and the burden of separate State requirements present the

imminent threat of restricting waste management capacity in the United States. Accordingly, NSWMA asks EPA to analyze its own and related State financial assurance requirements as an overall system and make appropriate changes.

In particular, NSWMA asks EPA to do the following:

First, EPA is asked to revise the financial test under RCRA Subtitle C. NSWMA states that the current financial test is not as accurate, efficient and available as originally predicted. Without revision, NSWMA believes the financial test will cease being a viable option for even the most financially sound waste management companies if aggregate levels of required assurance once again increase upon implementation of proposed Subtitle D financial assurance requirements. NSWMA recommends a revised test that will allow firms to assure higher levels of obligation while guaranteeing that firms will be able to meet those obligations.

Second, EPA is asked to allow firms to combine coverages within and across financial responsibility programs. NSWMA believes that requiring firms to add their obligations under one program (e.g., Subtitle C) to their obligations under other Federal programs (e.g., Subtitle D, PCB storage approval, underground storage tanks and underground injection wells) results in excessive cumulative coverage for hazards that are not correlated or likely to occur simultaneously. NSWMA believes that requiring firms to provide assurance for such highly improbable levels of costs will have adverse effects on the waste management industry.

Third, EPA is asked to provide waste management firms the option of satisfying compliance with proliferating State assurance requirements by complying with federally implemented financial responsibility requirements. NSWMA believes that differing State requirements result in overlapping financial assurance for highly improbable combinations of events at great cost, without compensating environmental benefit. NSWMA recommends that State programs not be allowed to set assurance requirements that deviate from the Federal limits, or that firms be provided the option of satisfying federally implemented financial responsibility options in lieu of State requirements.

Fourth, NSWMA proposes a variety of other revisions to the RCRA Subtitle C program including:

(1) A cap on the number of years for which assurance must be provided.

(2) Limiting assurance requirements to facilities open in the near-term.

(3) Allowing assurance cost calculation based on a 3 percent discount rate.

(4) Revising the trust fund requirements and allowing use of annuities.

(5) Permitting funds to accumulate in a letter of credit.

(6) Permitting non-parent corporate affiliates to provide corporate guarantees.

II. EPA's Decision

This notice addresses only the TSCA section 21 portion of NSWMA's petition. NSWMA's requests with respect to requirements under other EPA-administered statutes are still under review and will be addressed at a later time. (It is worth noting, however, that some of the issues raised by NSWMA with respect to the RCRA requirements are not new issues to EPA and the subject of an on-going review, independent of the NSWMA petition.) EPA is denying the portion of the petition filed under section 21 of TSCA for the following reasons:

1. The only TSCA rules affected by NSWMA's section 21 petition are the financial assurance requirements for commercial storers of PCB waste in 40 CFR part 761, recently issued under authority of TSCA section 6(e) (54 FR 52716, December 21, 1989). Those rules require that commercial storers of PCB wastes receive EPA approval to operate. One of the approval conditions is that such storers establish financial assurance for closure of each PCB storage facility they own or operate (40 CFR 761.65(g)). Recent experience has demonstrated the need for such financial assurance so that public resources do not have to be spent to clean up PCB storage facilities which failed to make provision for closure funds during their active life. Financial assurance is a necessary protection against the risk of corporate insolvency or bankruptcy that could result from a myriad of competitive, financial, and other factors, including, but not limited to, the cost of cleaning up environmental accidents.

In establishing financial assurance for closure, a commercial storer of PCB waste may choose from among the various financial assurance mechanisms established under the RCRA Subtitle C rules (40 CFR part 264). Indeed, the operative RCRA Subtitle C mechanisms have been made a part of the TSCA PCB financial assurance requirements. The RCRA financial assurance mechanisms which commercial storers of PCB waste may use include the following: closure

trust funds (§ 264.143(a)), surety bonds (§ 264.143(b) and (c)), letters of credit (§ 264.143(d)), insurance (§ 264.143(e)), the financial test and corporate guarantee (§ 264.143(f)), or a combination of these mechanisms (§ 264.143(g)).

The financial assurance mechanisms allowed under the TSCA PCB rules are essentially the same as the mechanisms allowed under RCRA regulations at 40 CFR parts 264 and 265, subpart H. EPA decided to adopt the RCRA financial assurance mechanisms for its PCB program, rather than develop different TSCA requirements, to ensure consistency across its programs with respect to such requirements. EPA believed, and still believes, that it would create unnecessary confusion and expense for the regulated community, as well as the administration of its own programs, to specify different financial assurance requirements for the TSCA and RCRA programs. This is especially so in view of the fact that many RCRA Subtitle C facilities already subject to the RCRA financial assurance requirements must now provide financial assurance for that portion of their operations dealing with PCBs which is not already covered under RCRA. To prescribe different financial tests under TSCA and RCRA would require such facilities to make separate financial projections under different regulatory tests at significant cost to themselves and EPA with no apparent gain in environmental protection. Even where TSCA facilities do not also have to provide RCRA financial assurance, creating different TSCA requirements for such facilities would unnecessarily complicate the regulatory oversight of TSCA and joint TSCA/RCRA facilities by EPA. Accordingly, EPA has decided that it is neither necessary nor advisable to make unilateral changes to the financial assurance requirements in its PCB program and, for that reason, denies NSWMA's section 21 petition.

2. Section 21 of TSCA authorizes any person to petition the Administrator to "initiate a proceeding for the issuance, amendment, or repeal" of a rule under section 4, 5, or 6 or an order under section 5(e) or 6(b)(2) of TSCA. Section 21 does not authorize a person to petition EPA to issue, amend or repeal rules issued under RCRA, SDWA or any statute administered by EPA other than TSCA. Accordingly, EPA denies NSWMA's section 21 petition to the extent it seeks issuance, amendment or repeal of any EPA rules not promulgated under TSCA. This includes NSWMA's request that EPA (1) revise the RCRA Subtitle C financial test, (2) permit companies to combine coverages across

RCRA, TSCA and SDWA programs (indeed, the PCB rules already exempt from additional TSCA financial assurance those facility operations covered under RCRA), and (3) make various other changes to the current or proposed RCRA Subtitle C or D requirements (Petition at 16-22). As stated above, EPA is not responding to NSWMA's petition under section 7004(a) of RCRA or section 553(e) of the APA at this time.

3. Finally, EPA denies NSWMA's section 21 petition to the extent it asks the Agency to preempt State financial requirements which deviate from the Federal limits established under RCRA, SDWA or TSCA. EPA denies the request to preempt requirements which differ from RCRA and SDWA on the ground that it does not have authority under TSCA to issue regulations defining the relationship between State laws and regulations issued under those statutes.

With respect to TSCA preemption, EPA denies NSWMA's request on the grounds that the TSCA financial assurance requirements for PCBs do not preempt State financial assurance programs related to PCB disposal activities. The PCB Notification and Manifesting Rule, which establishes the Federal financial assurance requirements for facilities which commercially store PCBs for disposal, is a "rule imposing a requirement described in subsection (a)(6)" of section 6 of TSCA (i.e., a rule regulating disposal of PCBs for commercial purposes). As such, it is a Federal rule which a State may supplement with its own financial assurance requirements, provided the State's regulations do not explicitly or effectively prohibit the disposal of PCBs within the State.

III. Public Record

A. Supporting Documentation

EPA has established a record for its response to this petition under section 21 of TSCA (docket number OPTS-211026). The public record contains the basic information considered by EPA in reaching this decision.

B. References

- (1) Letter from NSWMA to William Reilly, Administrator, EPA (February 16, 1990).
- (2) Letter from NSWMA to Charles Elkins, Director, Office of Toxic Substances, EPA (February 16, 1990).
- (3) Section 21 Petition from NSWMA to the EPA, with attachments (February 16, 1990).

IV. Conclusion

For the above reasons, EPA is denying NSWMA's petition filed under section 21 of TSCA.

Authority: 15 U.S.C. 2620.

Dated: June 7, 1990.

William K. Reilly,
Administrator.

[FR Doc. 90-14036 Filed 6-15-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL RESERVE SYSTEM

First Regional Bancorp, Inc., Hartford, CT; Proposal To Engage In Acting as Agent in the Private Placement of All Types of Securities and Providing Financial Advisory Services

First Regional Bancorp, Inc., Hartford, Connecticut ("First Regional"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR § 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, First Regional Investcorp, Inc., Hartford, Connecticut ("Company"), in the activities of acting as agent in the private placement of all types of securities, including providing placement of all types of securities, including providing related advisory services, and providing financial advisory services. First Regional has applied to conduct these activities on a nationwide basis.

First Regional seeks approval to act as agent in the private placement of all types of securities, pursuant to the methods, terms and conditions set out in the Board's Orders in *J.P. Morgan & Company, Incorporated*, 76 Federal Reserve Bulletin 26 (1990) and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1990).

First Regional also has applied to provide: (i) Advice in connection with mergers, acquisitions, divestitures, reorganizations, recapitalizations, and similar financial transactions; (ii) business valuations; (iii) fairness opinions in connection with mergers, acquisitions, and similar financial transactions; (iv) financial feasibility studies; (v) evaluations of tender offers; (vi) advice for management on the viability and capital adequacy of financially troubled companies; (vii) valuation opinions on transactions involving publicly held securities; and (viii) advice regarding the structuring of and arranging for loan syndication (collectively "financial advisory services"). Applicant maintains that the Board has previously approved the provision of these financial advisory services, subject to certain conditions. *Security Pacific Corporation*, 71 Federal Reserve Bulletin 118 (1985); *Signet Banking Corporation*, 73 Federal

Reserve Bulletin 59 (1987). First Regional would conduct its financial advisory services in accordance with prior Board Orders.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." First Regional contends that approval of its proposal would result in increased competition, gains in efficiency, and increased convenience for its customers.

First Regional further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed activities, First Regional states that these activities as previously approved by the Board do not constitute the underwriting, public sale or distribution of securities within the meaning of section 20 of the Glass-Steagall Act, and therefore are consistent with the Act.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 11, 1990.

Board of Governors of the Federal Reserve System, June 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14006 Filed 6-15-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 901 0026]

Amersham International PLC; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Buckinghamshire, England company from consummating the acquisition of Medi-Physics, Inc. by respondent until after the closing of the sale of Medi-Physics' SPECTamine business to IMP, Incorporated or any other Commission-approved acquirer.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580, (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of the proposed acquisition of Medi-Physics, Inc. ("Medi-Physics") by Amersham International plc ("Amersham"), sometimes referred to as proposed respondent, and it now appearing that Amersham is willing to enter into an agreement containing an order to cease and desist:

It is hereby agreed by and between Amersham, by its duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Amersham is a corporation organized, existing and doing business under and by virtue of the laws of England, with its offices and principal place of business located at Amersham Place, Little Chalfont, Buckinghamshire, England HP7 9NA.

2. Proposed respondent admits all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue a complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service.

Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the offices of Sullivan & Cromwell at 125 Broad Street, New York, New York 10004 shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for the purposes of this order the following definitions shall apply:

A. *Acquisition* means Amersham's acquisition of any or all of the stock or assets of Medi-Physics.

B. *Amersham* means Amersham International plc, a corporation organized, existing, and doing business under and by virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which three is partial (10 percent or more) or total ownership or control between corporations.

C. *Assignment Agreement* means the series of agreements between Medi-Physics (to which Amersham will become successor after Amersham acquires Medi-Physics) or Hoffmann-La Roche and IMP, Incorporated, consisting of the following documents: (1) An executed Assignment Agreement Between IMP, Incorporated and Medi-Physics, Inc.; (2) a Security Agreement, between IMP, Incorporated and Hoffmann-La Roche, Inc.; (3) a Manufacturing Agreement Between IMP,

Incorporated and Medi-Physics, Inc.; (4) a Promissory Note, from IMP, Incorporated to Hoffmann-La Roche; (5) a Bill of Sale, showing Medi-Physics' sale of the SPECTamine product to IMP, Incorporated; (6) a Trademark Assignment, from Medi-Physics, Inc. to IMP, Incorporated; and (7) an Assignment of U.S. Patent No. 4,360,511 from Medi-Physics, Inc. to IMP, Incorporated.

D. *Brain perfusion imaging product for use with SPECT equipment* (also referred to as "SPECT brain imaging agent") means a substance injected into the bloodstream, capable of crossing the blood-brain barrier, tagged with a short-lived radioactive isotope (Iodine 123 or Technetium 99-m) that enables blood perfusion of the brain to be imaged by using a computerized scintillation camera that produces tomographic images.

E. *Commission* means the Federal Trade Commission.

F. *Hoffmann-La Roche* means Hoffmann-La Roche, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of New Jersey, with its principal offices at 340 Kingsland Street, Nutley, New Jersey 07110-1199, as well as its directors, officers, employees, agents and representatives, its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations. Hoffmann-La Roche is the owner of all of the voting securities of Medi-Physics.

G. *IMP, Incorporated* means IMP, Incorporated, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters of 8044 El Rio, Houston, Texas 77054.

H. *Medi-Physics* means Medi-Physics, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices located at 140 East Ridgewood Avenue, Paramus, New Jersey 07653, as it was constituted prior to the Acquisition, as well as its directors, officers, employees, agents and representatives, its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint

ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

I. *Medi-Physics SPECTamine business* means and includes Medi-Physics' approved New Drug Applications ("NDA") for its Iofetamine HCl I-123 injection brain perfusion imaging product for use with Single Positron Emission Tomography ("SPECT") equipment, brand named SPECTamine ("SPECTamine"); U.S. Patent Number 4,360,511, expiration date 11/23/99, entitled "AMINES USEFUL AS BRAIN IMAGING AGENTS," U.S. Trademark No. 1,438,930; the U.S. SPECTamine customer lists; business records insofar as they relate to SPECTamine; all United States production technology and know-how related to SPECTamine as developed and currently produced and marketed by Medi-Physics in the United States; and all the results of research and development efforts by Medi-Physics relating to improvements, developments and variants of the SPECTamine product.

It is further ordered that Amersham shall not consummate the Acquisition until after the closing of the sale of the Medi-Physics' SPECTamine business to:

A. IMP, Incorporated, pursuant to the Assignment Agreement; or

B. Any other Acquirer approved in advance by the Commission and in a manner approved in advance by the Commission.

III

It is further ordered that until the date at which all of its obligations under the Assignment Agreement cease, Amersham, as successor in interest to Medi-Physics, shall not, without prior approval of the Commission, make or agree to any modification with respect to any terms [other than those concerning technical or mechanical aspects of either party's performance] contained in the Assignment Agreement or any other instruments approved by the Commission to execute the divestiture of Medi-Physics' SPECTamine business to an Acquirer.

IV

It is further ordered that Amersham shall provide to the Federal Trade Commission, as promptly as possible and in any event no later than thirty (30) days of their receipt of transmittal, copies of all communications between

Amersham and Medi-Physics, Hoffmann-La Roche, IMP, Incorporated or any other Acquirer of the Medi-Physics' SPECTamine business, regarding changes in or alleged breaches of the Assignment Agreement or any other instruments approved by the Commission to execute the divestiture of Medi-Physics' SPECTamine business to an Acquirer.

V

It is further ordered that for a period of ten (10) years from the date this order becomes final, Amersham shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through any subsidiary, corporate or other device, any stock, share capital, or equity interest in, or any assets relating to SPECT brain imaging agents of, any concern, corporate or noncorporate, engaged in the manufacture or sale, in or to the United States, of any SPECT brain imaging agent; provided, however, that nothing in this order shall require Amersham to obtain Commission approval of any action taken by Amersham in the ordinary course of Amersham's own business, whether in the manufacture or sale of products it currently manufactures or sells, or in the development of new products.

VI

It is further ordered that on the first anniversary of the date that this order becomes final, and on every anniversary thereafter for the following nine (9) years, and at such other times as the Commission or its staff may request, Amersham shall submit a verified written report setting forth in detail the manner and form in which Amersham intends to comply, is complying, and has complied with the terms of this Order and the Assignment Agreement.

VII

It is further ordered that Amersham shall notify the Commission at least thirty (30) days prior to any proposed change in Amersham, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance with this Order.

VIII

It is further ordered that Amersham shall notify the Commission within thirty (30) days of the date of FDA approval of the SPECTamine manufacturing facility of the Acquirer of Medi-Physics' SPECTamine business.

Analysis of Proposed Consent

Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement containing a proposed consent order from Amersham International plc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Amersham would acquire a monopoly in the business of developing, manufacturing, marketing, and selling radiopharmaceutical brain perfusion imaging agents for use with Single Positron Emission Tomography ("SPECT") equipment by acquiring all of the voting securities of Medi-Physics, Inc., a wholly-owned subsidiary of Hoffman-La Roche, Inc. It alleges also that the relevant geographic market is the United States and that this market is highly concentrated and that entry into this market is extremely difficult. It alleges that as a result of the acquisition, competition between Amersham and Medi-Physics would be eliminated, that if another firm should enter the market the likelihood of collusion between Amersham and that firm would be increased, and that the acquisition would increase the likelihood that prices in the relevant market would rise.

The proposed Agreement and Order provides that before Amersham may acquire Medi-Physics, Medi-Physics must divest its SPECTamine business to a third party, IMP, Incorporated, pursuant to the executed Assignment Agreement or to another firm approved in advance by the Commission and in a manner approved by the Commission. It also provides that for a period of ten years, Amersham may not acquire any interest in any other firm in the relevant market without prior approval from the Commission.

The anticipated competitive effect of the proposed order will be to assure that competition will continue in the United States market for brain perfusion imaging agents for use with SPECT equipment.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-14011 Filed 6-15-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 039]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Demonstration Cancer Control Projects for Farmers

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces availability of funds for cooperative agreements to conduct demonstration projects on effective cancer control for farm populations.

Authority

This program is authorized under section 20(a)(1) (29 U.S.C. 669[a](1)), Occupational Safety and Health Act of 1970 and the Public Health Service Act, section 301 (42 U.S.C. 241 [a]), as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, hospitals, research institutions and other public and private organizations, including state and local governments and small minority and/or women-owned businesses, are eligible for these cooperative agreements.

Availability of Funds

A total of up to \$2,000,000 will be available in Fiscal Year 1990 to fund approximately three cooperative agreements. It is expected that the average award will be \$650,000, ranging from \$300,000 to \$750,000. The awards are expected to begin on or about September 28, 1990, and will be made for a 12-month budget period within a project period of three years. The funding estimates outlined herein may vary and are subject to the availability of funds.

Purpose

The purpose of this cooperative agreement is to demonstrate the effectiveness of a strategy to reduce cancer morbidity and mortality among

farm populations which utilizes existing networks of rural nonprofit hospitals. Surveillance data have suggested that some groups of farmers may be at increased risk of certain cancers such as lymphoma, leukemia, lymphatic, hematopoietic, skin, lip, prostate, and stomach. Three demonstration projects will be funded that provide for a strategy for the prevention, screening and early detection, and timely treatment of cancer. The rationale for these demonstration projects is the belief that morbidity and mortality from cancer can be reduced by making more effective use of cancer related information on prevention, detection and treatment, especially by groups at high risk of either developing cancer or not surviving from it and that this can be most efficiently and effectively implemented utilizing existing community-based delivery systems. This broad view of cancer control is the thrust of the effort developed over the last eight years by the National Cancer Institute (NCI) as part of its strategy to reduce cancer mortality 50 percent by the Year 2000.

To ensure optimal reductions in cancer morbidity and mortality among farm populations, it is necessary to evaluate the unique barriers to cancer control encountered by farmers. The cancer control programs conducted within the three demonstration projects should address these barriers.

The proposed demonstration projects do not need to focus on all of the goals of cancer control; however, innovative cancer control activities should:

1. Affect the maximum number of farmers as quickly and cost effectively as possible by conducting projects through existing networks of rural nonprofit hospitals which have access to both the latest diagnostic equipment and board certified oncologists;
2. Increase preventive behaviors and awareness about cancer control measures such as knowledge of signs and symptoms pertaining to cancer;
3. Promote adherence of asymptomatic individuals to cancer prevention and early detection programs;
4. Utilize biological monitoring to enhance farmers' awareness of cancer risks by demonstrating that exposures or biologic changes have occurred;
5. Promote cancer control among farm populations; and
6. Promote cancer control awareness among rural health care providers.

Farming is both an occupation and a lifestyle; therefore, the scope of the proposed demonstration projects should not be limited to those cancers that are

considered to have occupational etiologies.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under "Recipient Activities" below and CDC will be responsible for conducting activities under "CDC Activities" below.

Recipient Activities

The recipient will be expected to design and implement a demonstration project which utilizes existing rural nonprofit hospital networks and includes the following components:

1. The development, in collaboration with NIOSH, of a protocol to assess whether use of cancer services, treatment and survival are different among farm versus non-farm populations. To evaluate the barriers to effective cancer control, the protocol should include:
 - a. At least one occupational cancer and one non-occupational cancer; and
 - b. Comparison of persons with cancer cases from farm and non-farm populations in terms of access to screening and treatment, survival, health insurance, and health care utilization.
2. Implementation of the protocol and utilization of information learned from the study in the activities discussed in the next paragraph.
3. Development of a cancer control program which consists of a coordinated set of activities designed to reduce cancer morbidity/mortality in a farm population. The cancer control activities should pertain (but need not be limited) to the cancers assessed under the first program requirement and must be focused on individuals at risk of those cancers. These activities may include but are not limited to:
 - a. Disseminating risk information;
 - b. Providing information on reducing or eliminating hazardous exposures;
 - c. Implementing education programs about the need to know and act on early signs and symptoms;
 - d. Promoting the appropriate use of cancer screening for early detection; and
 - e. Ensuring comprehensive and effective treatment and rehabilitation.
4. Development of a cancer control program which has the following characteristics:
 - a. Clearly defined objectives and endpoints;
 - b. Identification of specific target populations, including demography and farming characteristics;

c. Rationale for choosing the cancers to be addressed in the target population;
d. Participation of the local health and community organizations representing the target population;

e. Adequate statistical power; and
f. Suitable pre-specified method of evaluation.

5. Development of a timetable for implementation and evaluation of all components of the proposed demonstration project.

6. The long range objective of the demonstration projects is to reduce the morbidity/mortality of farmers due to cancer. For this program, intermediate endpoints such as increased knowledge of risk factors, degree of adherence to preventive or follow-up services, or change in a biological marker are acceptable surrogate measures. These surrogate measures of effectiveness must be clearly defined and justified.

7. Biological monitoring may be incorporated as part of the demonstration project. However, only those applicants with interest in this area are encouraged to develop this option in the context of the demonstration project. In the proposal, the applicant should therefore demonstrate the feasibility of the proposed biological monitoring effort and describe how the results of biological monitoring will be related to other components of the demonstration project.

CDC Activities

1. Provision of technical support:

a. Provide technical information and support concerning occupational cancers and their risk factors; provide industrial hygiene guidance in the assessment of farm environments; and provide consultation in the development of epidemiologic studies.

b. Provide consultation on any aspects of biological monitoring including selection of endpoints and methods of assay of carcinogens and premalignant changes.

c. Coordinate review of protocol by NIOSH and other occupational safety and health experts whom NIOSH select.

d. Assist in the analysis, interpretation and dissemination of the study data.

2. Serve as liaison with other NIOSH-funded cancer control projects. Since NIOSH is funding a number of different cancer control projects, there will be additional benefit to all recipients if there is an interchange of information gained from investigation of barriers and from different approaches used in the demonstration projects.

Projects funded through a cooperative agreement that involve collection of

information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

Evaluation Criteria

The review of applications will be in accordance with PHS Grants Administration Manual, part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the technical and scientific merit of the application. The major factors to be considered in the evaluation of responsive applicants are:

1. Extent to which the proposed demonstration project will meet the goal of developing, implementing, and evaluating the effectiveness of interventions designed to reduce cancer morbidity/mortality among farm populations in the upper Midwest. (20%)

2. Scientific merit of the approach, design, and methodology which will be utilized to conduct the cancer control program, and the public health significance of the project. (15%)

3. The extent to which the applicant understands the objectives of the project, the steps to be taken in planning and implementing this project, and the responsibilities of the applicant for carrying out those steps. (10%)

4. The applicant's ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and to describe the approach to be used in carrying out those responsibilities. (10%)

5. The feasibility of obtaining participation of subjects and of obtaining existing appropriate data. (10%)

6. The extent to which the proposed schedule clearly defines the timeframe and the feasibility for accomplishing each of the activities to be carried out in this project, and the extent to which a clearly defined method for evaluating the accomplishment of the project is proposed. (10%)

7. The qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; the facilities, space and equipment available for performance of this project; and the capability of the applicant's administrative structure to foster the development of the project. (15%)

8. The proposed plan for administering this project and the name, qualifications, and time allocations of the project director who will be responsible for its administration. (10%)

9. That the estimated cost to the Government of the project is reasonable, clearly justified, and consistent with the intended use of funds. The budget should indicate (a) Anticipated costs for personnel, travel, communications and postage, equipment, contracts, and miscellaneous supplies for each budget period, and (b) the applicants and other sources of funds that will be contributed to meet those needs. (Not Scored)

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 13.262.

Application Submission and Deadline

The original and two copies of the application shall be submitted on PHS Form 5161-1 (Rev. 3/89) to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 415, Mail Stop E-14, Atlanta, Georgia, 30305 on or before August 13, 1990.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Donna Rushin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 415, Mailstop E-14, Atlanta, Georgia, 30305, or by calling (404) 842-6630 or FTS 236-6630.

Please refer to Announcement number 039, "Demonstration Cancer Control

Projects for Farmers" when requesting information and submitting an application that pertains to this project.

Technical assistance may be obtained from Paul Schulte, Ph.D., Chief, Screening and Notification Section, NIOSH—R-13, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio, 45226-1998, or by calling (513) 841-4207 or FTS 634-4207. Additional technical assistance may be obtained from Geoffrey M. Calvert, M.D., M.P.H., Medical Epidemiologist, NIOSH—R-16, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio, 45226-1998, or by calling (513) 841-4481 or FTS 684-4481.

Dated: June 12, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-14019 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Agribusiness Marketers, Inc.; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Agribusiness Marketers, Inc. The NADA provides for the use of *n*-butyl chloride capsules for the removal of ascarids and hookworms from dogs. The firm requested withdrawal of approval. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the animal drug regulations by removing the portion of the regulations reflecting the approval.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Agribusiness Marketers, Inc., 2667 West Dual, Baton Rouge, LA 70814, is the sponsor of NADA 92-481, which provides for the use of *n*-butyl chloride capsules for the removal of ascarids and hookworms from dogs. The NADA was approved on April 15, 1974.

By letter dated October 24, 1989, the sponsor requested the agency to withdraw the approval because the

product is not being manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115. Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 92-481 and all supplements thereto is hereby withdrawn, effective June 28, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 520.260(b)(2) to reflect the withdrawal of approval of the NADA and all supplements thereto.

Dated: June 8, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-13968 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 68N-0394]

Generic Animal Drug and Patent Term Restoration Act; Fifth Policy Letter; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a fifth policy letter, dated April 12, 1990, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. The letter, prepared by the Center for Veterinary Medicine (CVM), contains a revised bioequivalence guideline dated April 12, 1990. The new guideline supersedes the previous one dated April 19, 1989, and takes into account comments received concerning it. The agency is now soliciting comments on the April 1990 bioequivalence guideline included with this policy letter.

DATES: Written comments may be submitted at any time regarding this or previous policy letters or implementation of the Generic Animal Drug and Patent Term Restoration Act.

ADDRESSES: Submit written requests for single copies of the fifth policy letter and guideline to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, Rm. 7-85, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy letter to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the

docket number found in brackets in the heading of this document. The policy letter and received comments are available for public examination in the Dockets Management Branch between 9 am. and 4 pm., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Robert C. Livingston, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension of certain animal drugs.

In the Federal Register of December 15, 1988 (53 FR 50460), FDA published a notice of availability of the November 23, 1988, policy letter discussing the list of approved drugs that FDA must publish, patent certifications that generic applicants must make, patent information that pioneer sponsors must submit, and exclusivity claims that pioneer sponsors may make.

In the Federal Register of June 21, 1989 (54 FR 26111), FDA published a notice of availability of the June 7, 1989, policy letter concerning a document entitled "Generic Animal Drug and Patent Term Restoration Act—Implementation." The document includes a description of the proposed administrative procedures to be used in implementation of the new law, a draft of CVM's manufacturing requirements for abbreviated new animal drug applications (ANADA's), a draft bioequivalence guideline, and draft procedures for environmental review of generic animal drugs.

In the Federal Register of August 28, 1989 (54 FR 35534), FDA published a notice of availability of the August 2, 1989, letter containing policy statements concerning exclusivity of human food safety data submitted in a supplemental application, withdrawal period for generic animal drugs, substitution of active ingredients in combination drugs or in feed use combinations, labeling requirements for generic drugs, exclusivity for generic animal drug sponsors for innovations approved under a supplement to an ANADA, and a pioneer drug sponsor's right to copy a generic innovation.

In the Federal Register of January 30, 1990 (55 FR 3107), FDA published a

notice of availability of the November 2, 1989 letter containing policy statements concerning safety and effectiveness determinations for pioneer drugs that have been withdrawn from sale, approval of abbreviated applications for pre-1962 drugs, and approval of combination generic drugs for feed use.

FDA is now announcing the availability of a fifth policy letter dated April 12, 1990. This letter includes a revised bioequivalence guideline (dated April 12, 1990) which supersedes the previous version (dated April 19, 1989). The April 1990 guideline incorporates comments received concerning the previous guideline. Those revisions are discussed in the preamble to the revised guideline.

The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the *Federal Register*.

Dated: June 8, 1990.

Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-13966 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-01-M

Moorman Manufacturing Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Moorman Manufacturing Co. The NADA provides for use of a medicated block containing ronnel for the control of hornflies and grubs on cattle. The firm requested withdrawal of approval. In a final rule published elsewhere in this issue of the *Federal Register*, FDA is amending the animal drug regulations by removing the portion of the regulations reflecting the approval.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Moorman Manufacturing Co., Quincy, IL

62301, is the sponsor of NADA 13-450, which provides for the use of Moorman's Rid-Ezy Block Medicated (ronnel). The product is a medicated mineral block containing ronnel for the control of hornflies and grubs on cattle. The NADA was approved January 22, 1963.

By letter dated October 6, 1989, the sponsor requested the withdrawal of approval because the product is not being manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 13-450 and all supplements thereto is hereby withdrawn, effective June 28, 1990.

In a final rule published elsewhere in this issue of the *Federal Register*, FDA is removing 21 CFR 520.2080a to reflect the withdrawal of approval of the NADA and all supplements thereto.

Dated: June 11, 1990.

Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 90-13965 Filed 06-15-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0368]

Action Levels for Residues of Certain Pesticides in Food and Feed; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; general statement of policy; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice published in the *Federal Register* of April 17, 1990 (55 FR 14359) that explained how the agency will use action levels in regulating residues of certain pesticides for which there are no tolerances but that may unavoidably be present in food or feed. Four errors were made in the action level for commodities and one error was made in describing a commodity. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-8825, appearing at page 14359 of the *Federal Register* of Tuesday, April 17, 1990, the following corrections are made: On page 14362, in the first

column, under the heading "Action level (ppm)", for the entry "Lettuce", ".05" is corrected to read ".5"; in the second column, under "I. Heptachlor and Heptachlor Epoxide", "Bulk vegetables" appearing under the heading "Commodity", is corrected to read "Bulb vegetables", under the heading "Action level (ppb)" for the entry "Milk", ".2.01" is corrected to read ".2.1", and for the entry "Rabbit", ".2.02" is corrected to read ".2.2"; and in the third column, under "J. Lindane", for the entry "Hay", and under the heading "Action level (ppm)", "1" is corrected to read ".1".

Dated: June 12, 1990.

Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 90-13987 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Formula Grants to States, Territories and Indian Tribes or Tribal Organizations for Home and Community-Based HIV/AIDS Health Services

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Bureau of Health Resources Development (BHRD), Health Resources and Services Administration (HRSA), announces to the public and particularly to home health care agencies and individuals infected with the Human Immunodeficiency Virus (HIV), that Fiscal Year 1990 funds have been made available to States, territories, and Indian Tribes or tribal organizations for home and community-based health services for individuals infected with the HIV who are either medically or chronically dependent. A notice announcing the availability of funds was published on May 29, 1990 (55 FR 21794).

SUPPLEMENTARY INFORMATION: Funds were appropriated by Public Law 101-166 under the authority of section 2414 of the Public Health Service Act for grants to States for home and community-based health services. These services are defined as skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a health care professional for the provision of the following types of services and items: durable medical equipment; homemaker/home health aide services; day treatment or other

partial hospitalization; home intravenous therapy (including prescription drugs administered intravenously); and routine diagnostic tests administered in the home. States must agree to give priority to the provision of outreach and home and community based services to eligible individuals with low income.

States are required to conduct public hearings on the proposed use and distribution of funds. States may make payment for services through grants to public and non-profit private entities and through contracts with public and private entities. Furthermore, states are required to give priority to public and nonprofit private entities that have demonstrated experience in delivering home and community-based health services to individuals with HIV.

FOR FURTHER INFORMATION CONTACT: For further information regarding State participation, contact the State's Governor's office or Ms. Sheila McCarthy, Division of HIV Services, BHRD, Parklawn Building, Room 9A-05, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443-9086, for the name of the contact person in your State.

Executive Order 12372

The Home and Community-based HIV/AIDS Health Services program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs. The OMB Catalog of Federal Domestic Assistance number for Home and Community-Based HIV/AIDS Health Services is 13.199.

Dated: June 12, 1990.

Robert G. Harmon,
Administrator.

[FR Doc. 90-14008 Filed 6-15-90; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Office of the Assistant Secretary for Human Development Services.

Times and Dates: 9 a.m. June 28, 1990 to 5 p.m. June 28, 1990.

Place: Hubert H. Humphrey Building, room 800, 200 Independence Avenue, SW., Washington, DC.

Status: The meeting is open to public observation.

Matters to be Considered: At this meeting the U.S. Advisory Board will:

Analyze the prepublication version of the first Board report; discuss proposals for the second year of Board activities; meet with members of the National Child Abuse Coalition to determine strategies for assuring that the first Board report reaches the widest possible audience; meet with the Secretary of Health and Human Services to discuss the first Board report; present the report to the public at a press conference; meet in committee to begin work on the second Board report; and hear from several officials of the Department of Health and Human Services.

CONTACT PERSON FOR MORE INFORMATION:

Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, room 2070-C Switzer Building, Washington, DC 20201 (202) 247-0877.

Dated: June 12, 1990.

Byron D. Metrikin-Gold,
Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 90-13978 Filed 6-15-90; 8:45 am]

BILLING CODE 4130-01-M

[Program Announcement No. HDS/ACYF/TLP 13.550-90-3]

Transitional Living Program for Homeless Youth; Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of availability of financial assistance for the Transitional Living Program for Homeless Youth.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth and Families announces the availability of fiscal year 1990 funds for the Transitional Living Program for Homeless Youth (Part B of the Runaway and Homeless Youth Act). A national competition is being held to award grants to provide shelter, skill training and support services in local communities to homeless youth. Procedures for the provision of technical assistance to the Transitional Living Program grantees will be addressed under a separate announcement.

DATES: The deadline or closing date for receipt of all applications under this announcement is: August 17, 1990.

ADDRESSES: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200

Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-90-3-ACYF/Transitional Living.

FOR FURTHER INFORMATION CONTACT: Dr. Preston Bruce or Pamela A. Johnson, Administration for Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, telephone: (202) 245-0049.

SUPPLEMENTARY INFORMATION:

Part I. Background Information

A. Scope of This Program Announcement

This program announcement solicits applications, specifies the requirements, and describes the application process for the Transitional Living Program (TLP) for Homeless Youth grants. These TLP grants will be competitively awarded during the fourth quarter of fiscal year 1990. Project periods for grants will be up to three years.

B. Legislative Authority

Grants under this program are authorized by the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690). The Transitional Living Program for Homeless Youth is Part B of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.*

All interested applicants should be aware that, in implementing the Transitional Living Program for Homeless Youth, certain sections of parts C and D of the Runaway and Homeless Youth Act are applicable and are reflected throughout this announcement as necessary. In part C, section 341 sets forth the requirement that the Department provide informational assistance to potential grantees. Section 342 permits the lease of surplus Federal property for use as shelter facilities by runaway and homeless youth centers or transitional living youth shelters. Part D sets forth the Administrative Provisions of the Act. TLP grantees must meet the requirements of section 362 on the Federal share of funds and section 363 on the confidentiality of records.

C. Outline of Program Announcement

This program announcement consists of six parts and appendices. Part I provides background information for potential applicants in applying for TLP grants. Part II describes the requirements of part B of the Runaway and Homeless Youth Act with regard to the services and activities that must be carried out by TLP grantees. Part III describes the responsibilities of the

grantee in operating a TLP grant. Part IV describes the procedures for the preparation of the program narrative statement. Part V provides the evaluation criteria to be used in evaluating the applications. Part VI describes the application review and decision-making processes. Part VII provides instructions for completing and submitting an application for a TLP grant. Following part VII are the appendices to be consulted and the forms to be used in the preparation of the application.

D. Program Purpose

One purpose of the TLP is to make grants to help establish and operate transitional living service projects for homeless youth. This program was authorized by Congress to support community-based programs designed to support the transition of homeless youth to self-sufficient living arrangements.

To clarify the purpose and emphasis of the new program, the following terms are defined in Part B of the Act. Section 321(b)(1) defines a "homeless youth" as an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement.

Under section 321(b)(2), a "transitional living youth project" means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services.

While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to make the transition to independent living. Their basic human needs (shelter, food, clothing) are not being met, nor are their developmental needs receiving adequate attention. Moreover, homeless youth lack a supportive, safe environment in which they can develop a positive sense of identity and self-sufficiency. An individual must have a sense of continuity of experience in order to bridge what they were as a child to what they are becoming as an adult. Homeless youth, lacking a stable family environment to provide this continuity, are in need of a support system that will assist them in making the major transition to adulthood and independent living.

It is estimated that about one-fourth of the youth served by runaway and homeless youth programs are homeless. This means that many of the youth served can not return home or move to

another safe living arrangement with a relative, in most cases, due to severe family dysfunction. Other homeless youth have "aged out" of the child welfare system and are no longer eligible for foster care. These young people are often lacking both the skills and the personal characteristics which enable them to live independently. Therefore, without social and economic supports, homeless youth are not likely to make a successful transition to independence and are at high risk of being involved in dangerous lifestyles and problematic behaviors such as drug and alcohol abuse and prostitution. More than two-thirds of homeless youth report using drugs or alcohol and many homeless youth have experienced long-term physical and sexual abuse in their families.

Homeless youth need a range of services to develop the skills necessary to make the transition from homelessness to self-sufficiency. Since 1978, homeless youth have been an identified population eligible to receive services under the Runaway and Homeless Youth Act. It has become apparent over the years that the service goals for homeless youth and runaway youth are quite different. For runaway youth, family reunification is often desirable and appropriate; for homeless youth, reunification is typically not feasible. In many instances, runaway programs have been able to provide only limited assistance to homeless youth whose needs are more complex and long-term than those of runaway youth. Part B of the Runaway and Homeless Youth Act is intended to address the unique problems and needs of homeless youth.

Throughout the 1980's, the Runaway and Homeless Youth Act discretionary funds were used to support the development of model programs and practices to serve the needs of homeless youth. Several different types of transitional living program models have been developed and effectively implemented to serve homeless youth. These models have been replicated in other communities where the need exists and resources are available.

E. Program Goals and Objectives

The primary goal of the Transitional Living Program for Homeless Youth is to support projects which assist homeless youth (as defined under section D above) in making a successful transition to self-sufficient living and to prevent long-term dependency on social services. This goal is to be achieved through the implementation of several major program objectives. These are:

1. Providing stable, safe living accommodations while a homeless youth is a program participant;
2. Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
3. Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth; and
4. Providing homeless youth with appropriate referrals and access to substance abuse and mental health treatment.

Funds available under part B of the Act are to be used to enhance the capacities of youth-serving agencies to effectively address the service needs of homeless older adolescents and young adults.

This program is not designed to serve youth currently under the jurisdiction of a State or local probation or parole program.

This program affords youth service agencies an opportunity to serve homeless youth in a manner which is comprehensive and directed toward ensuring a successful transition to self-sufficiency. Also, improving the availability of comprehensive transitional living services for homeless youth will reduce the risk of exploitation and danger to which these youth are exposed by living on the streets without positive economic or social supports.

F. Available Funds for Program Grants and Grantee Share

In FY 1990, the Administration for Children, Youth and Families (ACYF) expects to award approximately \$9,500,000 in Transitional Living Program grants. The maximum Federal share of the project is not to exceed \$250,000 per budget year. The initial grant period will be 15 months.

All grant applicants should request project periods of up to three years (Standard Form 424A, Rev. 4-88, Budget Information, Section E). Initial grant awards will cover budget periods of only 15 months. The subsequent award of funds will depend upon satisfactory performance by the grantee (including timely submission of required reports) and on the availability of appropriated funds.

Grant awards will be made from late August 1990 through the end of September 1990.

Funding recommendations will be based primarily on the scores assigned to the applications by the non-Federal reviewers, who will evaluate each application according to the criteria

described in Part IV, below. The results of the competitive review will be the primary factor taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with OHDS Regional officials, will recommend to the Commissioner, ACYF, the projects to be funded. The Commissioner will make the final funding decisions.

The number of grants awarded will depend upon the number of acceptable applications and the amount available for grants.

The Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds requested under this announcement as described in part VI, section G, "Grantee Share of the Project."

Grants awarded under this program may not be used as matching funds (non-Federal share) of other Federal programs or to supplant funds available under the Title IV-E Foster Care Independent Living Initiatives or any other Federally-funded program.

G. Eligible Applicants

States, Territories, localities, and private non-profit agencies are eligible to apply for TLP grants under this announcement. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private agencies. Collaborative applications between State and community-based agencies and collaborative applications between community-based agencies are also eligible for consideration under this grant program. However, only one entity may be designated as the direct recipient of these Federal funds.

Applicants are reminded that organizations awarded grants under Part B of the Act must be the primary service providers. Any subgrant or other support service arrangement must be identified and described in the application, including the specific terms of the agreement and the signatures of the parties involved.

Applicants are further reminded that TLP grants may be awarded to agencies which will operate a group home facility, or to agencies which will provide shelter through a series of host homes or supervised apartments, or to agencies which will employ a combination of these or similar housing options. In general, shelter provision as it is currently practiced in the field, can be described in the following manner. Host homes are facilities providing shelter, usually the home of a family,

under contract to accept homeless youth assigned by the TLP service provider, and are licensed according to State or local laws. A supervised apartment is a single unit dwelling or multiple unit apartment house operated under the auspices of the TLP service provider for the purpose of housing program participants. These dwellings operate in accordance with State or local housing codes and licensures.

Part II. Requirements of the Runaway and Homeless Youth Act, Part B

Section 322(a) of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth as defined in section 321(b)(2) and shall submit a plan in which the applicant agrees, as part of such project:

1. To provide, directly or indirectly, shelter (such as group homes, host family homes and supervised apartments) and services (including information and counseling services in basic life skills, interpersonal skill building, decision making, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

2. To provide such shelter and services to individual homeless youth throughout a continuous period not to exceed 540 days (18 months);

3. To provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

4. That such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

5. To provide and train a sufficient number of staff to ensure that all homeless youth participating in the project receive adequate supervision and services;

6. To provide a written transitional living plan for each youth, based on an assessment of such youth's strengths and needs, designed to help the transition from supervised participation in such a project to independent living or another appropriate living arrangement;

7. To ensure proper referrals of homeless youth to social service, law enforcement, educational, vocational, training, welfare, housing, legal services, and health care programs and help integrate and coordinate such services for youth;

8. To provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

9. To submit an annual report on the activities carried out with funds under this part, the achievements of the project by the applicant, and statistical summaries describing the number and characteristics of the homeless youth who participate in the project in the year for which the report is submitted;

10. To implement accounting procedures and fiscal control devices sufficient to account for income and expenditures of the project;

11. To submit an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant;

12. To keep adequate statistical records on the number and characteristics of homeless youth served and to ensure nondisclosure of the identity of individual homeless youth in reports or other documents based on such statistical records;

13. Not to disclose records maintained on individual homeless youth without the consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in the disposition of criminal charges against the youth; and

14. To provide such other information as may be reasonably required by the Administration for Children, Youth and Families.

Section 322(b) of the Act requires that, in selecting eligible applicants to receive grants under this part, the Department give priority to entities that have experience in providing shelter and the types of services required to be provided under this announcement.

Part III. Responsibilities of the Grantee

Applicants for funding under this program announcement must present a plan in the program narrative/evaluation criteria section of their application that demonstrates that they are able to meet the requirements of the law listed in part II, including the following specific responsibilities:

A. Shelter

1. Assure that shelter is in one or a combination of the following or similar forms: (A) A group home facility; (b) family host homes; or (c) supervised apartments (section 322(a)(1)). Applicants should indicate if shelter is to be provided directly or indirectly, and must document the availability of shelter facilities. When shelter is to be provided indirectly, applicants must provide evidence of formal written agreements with the service providers regarding the terms under which shelter will be provided.

2. Assure that each facility used for housing shall accommodate no more than 20 youth at any given time (section 322(a)(4)); shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home (section 322(a)(3)); and is in compliance with State and local licensing requirements;

3. Assure that shelter facilities, host family homes and supervised apartments will receive adequate, on-site supervision (section 322(a)(5)) including periodic, unannounced visits from project staff.

4. The lease of surplus Federal facilities for use as transitional living youth shelter facilities may be considered if it is determined that the applicant meets the requirements in section 342(a) (1) through (3) of the Act (42 U.S.C. 5714b(a) (1) through (3)). Each surplus Federal facility used for this purpose must be made available for a period not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such facility (section 342(b)(1)). Any structural modifications or additions to surplus Federal facilities become the property of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official (section 342(b)(2)).

In addition, the Office of Special Needs Assistance Programs within the Department of Housing and Urban Development (HUD) offers several housing programs which could benefit homeless service providers. These programs include the Transitional Housing Program which supports the development of innovative approaches to providing short-term (24 months or less) housing and support services to homeless persons who are capable of making the transition to independent living; the Emergency Shelter Grants Program which, among other purposes, provides funds to meet the costs of operating shelters; provides essential social services to homeless individuals; and provides services to help prevent homelessness. Under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program, particularly innovative approaches to satisfying the immediate and long term needs of the homeless are supported through several categories of activities. These activities include, but are not limited to, grants for rehabilitation, supportive services, and operating costs for facilities to assist the homeless.

Finally, Title V of the Stuart McKinney Act establishes a procedure for the identification and use of Federal

real property for facilities to assist the homeless. States, units of local government, and private non-profit organizations may submit applications for property determined suitable for homeless assistance use. This program is jointly administered by HUD, HHS, and the General Services Administration (GSA). HUD publishes a weekly Federal Register notice listing property determinations. Homeless assistance providers have thirty days from the date a suitable property appears in the Federal Register to advise HHS of their interest in the property.

Private, non-profit organizations in addition to States and units of local government are eligible to apply for these programs which may be a valuable resource for transitional living service providers. Specific information on application procedures, timelines, and more detailed explanations of the homeless assistance programs is available from the Office of Special Needs Assistance, HUD, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-4300.

B. Services

Include a description of the core services to be provided, as mandated by section 322(a)(1) of the Act. The descriptions should include, but are not necessarily limited to the following services:

1. Basic life skills information and counseling, such as personal finances, housekeeping, menu planning and food preparation, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

2. Interpersonal skill building, such as positive relationships with peers and adults, communication, decision-making, and stress management.

3. Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical schools, military, etc.) and vocational education.

4. Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

5. Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

6. Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

C. Administration

1. Describe the procedures that will provide for a coordinated approach to

the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the areas in section B above appropriate to the individual needs of the client (section 322(a)(6)).

2. Describe how the applicant will ensure that individual clients meet the eligibility criteria established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client upon acceptance into the TLP project. Applicants are encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

3. Assure that the clients will substantively participate in the assessment of their needs and the decisions about the services to be received.

4. Assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project (section 322(a)(8)).

5. Include a description of how the project has or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed (section 322(a)(7)). This may include establishing a case management team composed of practitioners from the agencies involved in providing services.

6. Assure cost-effective use of TLP funds by taking maximum advantage of existing resources within the State which would help in the establishment, operation, or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP. (The names and addresses of State Independent Living Initiatives Coordinators can be found in appendix F.)

7. Provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months) (section 322(a)(3)).

8. Describe the method for collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services (section 322(a)(9)).

9. Describe how the applicant will ensure the confidentiality of client records (section 322(a)(13)).

Part IV. Preparation of the Program Narrative

The Program Narrative Statement should clearly address how the applicant will carry out each of the grantee responsibilities enumerated in Parts II and III above and must respond to the evaluation criteria in Part V below.

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application.

The Program Narrative Statement should be clear and concise and should not exceed 30 single-spaced pages exclusive of such necessary attachments as organization charts, resumes, and letters of agreement or support.

Applications with narratives exceeding 30 single-spaced pages will not be considered for funding.

Part V. Evaluation Criteria

In considering how the applicant will carry out the responsibilities addressed in Parts II and III of this announcement, the application will be reviewed and evaluated against the following criteria:

Criterion 1. Objectives and Need for Assistance (20 Points). The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problem requiring a solution in the geographic areas that the project is proposing to serve; demonstrates the need for the assistance and states the goals or service objectives of the project; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and gives a precise location of the project sites and areas to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant may refer to Part I, Sections D and E of this announcement.)

Criterion 2. Results or Benefits Expected (20 Points). The extent to which the identified results and benefits to be derived from the project are consistent with the objectives of the proposal; states the numbers of clients to be served; and describes the types of services to be offered.

Criterion 3. Approach (35 Points). The extent to which the application outlines a sound and workable plan of action as required by section 322(a) of the Act and describes in Parts II and III above pertaining to the scope of the project;

details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work; gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The extent to which the project will take advantage of existing resources within the community and State to help establish, operate, or coordinate TLP services. Application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. Staff Background and Organizational Experience (15 Points). The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrates the ability to effectively and efficiently administer a project of this size, complexity, and scope; and reflects the ability to coordinate activities with other agencies.

Application also lists each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Criterion 5. Budget Appropriateness (10 Points). The extent to which the project costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the activities to be carried out and anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. (Applicants may refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and to the results or benefits expected as identified under Criterion 2.)

Part VI. Application Process

A. Assistance to Applicants

Interested applicants can receive informational assistance in developing applications from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement). Organizations may also receive information on application procedures from the appropriate OHDS Regional Offices (see appendix D). For general information on different models of transitional living programs, applicants may also contact the National Resource Center for Youth Services at the University of Oklahoma, 202 West Eighth, Tulsa, Oklahoma 74119-1419.

B. Application Requirements

To be considered for TLP grant, each application must be submitted on the forms provided at the end of this announcement (see "F" below) and in accordance with the guidance provided herein. The application must be signed by an individual authorized to act for the applicant agency and authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications by OMB.

D. Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the States' Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact

(SPOCs). Applicants from these nine areas need to take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. OHDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

HDS must obligate the funds for these awards by September 30, 1990. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on (insert date 30 days from the application deadline date) in order for HDS to receive, consider, and accommodate SPOC input.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attn: William J. McCarron, HDS-90-3-ACYF/Transitional Living.

A list of the Single Points of Contact for each State and Territory is included as appendix C of this announcement.

E. Availability of Forms and Other Materials

A copy of each form required to be submitted in an application for a TLP grant under Part B of the Runaway and Homeless Youth Act and instructions for completing the application are provided in appendices A and B, including certifications for a Drug-Free Workplace and Debarment. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review

copies of their proposals are listed in appendix C. The Runaway and Homeless Youth Act (42 USC 5701 et seq) may be found in major public libraries and at the Regional Offices listed in appendix D at the end of this announcement. Additional copies of this announcement may be obtained from the Regional Offices or from the information contact persons listed at the beginning of the announcement.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined above. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. These experts will review applications to determine that applicants conform to the requirements of the Act (see Part II) by applying the criteria presented in Part V and assigning a total score to each application. The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with OHDS Regional officials, will recommend to the Commissioner, ACYF, the projects to be funded.

The Commissioner will make the final selection of the applicants to be funded. In the interest of effective geographic distribution of the TLP grants, the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner may also elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications have been disapproved will be notified in writing of that decision.

G. Grantee Share of the Project

The Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds awarded

under this announcement. For example, if the applicant requests \$100,000 in Federal funds (line 15a of Standard Form 424), then the non-Federal share (the sum of lines 15b, 15c, 15d, and 15e) must equal or exceed \$10,000. For a project requesting \$150,000 in Federal funds, the non-Federal share must equal or exceed \$15,000.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR parts 74 and 92, the Department's regulations on the Administration of Grants. Federal Independent Living Initiatives funds provided to States and services or other resources purchased with these funds may not be used to match Transitional Living project grants.

Part VII. Instructions for Completing and Submitting the Application

A. Contents of Application

Each copy of the application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4-88) (page i).
2. Budget Information (Standard Form 424A, REV 4-88) (pages ii-iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv-v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88) (pages vi-vii).
5. Certification Regarding Anti-Lobbying (page x).
6. Organizational Capability Statement.

Applicants should provide a brief (no more than two pages, single-spaced) description of how the applicant agency is organized and the types and costs of services it provides, including services to clients other than homeless youth. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide the direct services to homeless youth, and indicate the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. Discuss the experience of the applicant organization in providing services to homeless youth.

7. Program Narrative Statement (pages 1 and following; 30 pages maximum, single-spaced).

Special Note: Applications With Program Narrative Statements Exceeding 30 Single-Spaced Pages Will Not Be Considered for Funding.

8. Supporting Documents (pages SD-1, SD-2, etc.; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application

1. Standard Forms 424 and 424A: Follow the instructions in appendix B.

2. Budget Justification: Provide breakdowns for major budget categories and justify significant costs.

3. Standard Forms 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, Certification Regarding Lobbying, and Application Certifications for Profit Making Organizations: Self explanatory.

4. Program Narrative Statement: Follow the outline of the Preparation of the Program Narrative (Part IV) and the Evaluation Criteria (Part V).

5. Supporting Documentation: Self-explanatory. Each application will be copied by the Government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements should be followed:

a. Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. Resumes must be limited to one page.

b. The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate

subsections of the application, including supporting documentation.

C. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The Catalog of Federal Domestic Assistance Number (13.550) and Title (Transitional Living Program for Homeless Youth) must be clearly identified on the application (SF 424, box 10).

1. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: August 17, 1990. Applications must be mailed or hand delivered to: Department of Health and Human Services, HDS/ Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341-F2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-90-3-ACYF/RHYP/Transitional Living. Hand delivered applications will be accepted during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

2. Deadline for Submission of Applications

a. **Deadlines.** An application will be considered as meeting the deadline if it is either:

(1) Received on or before the deadline date at the above address, or

(2) Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1-62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial

carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

b. **Late applications.** Applications which do not meet the criteria in paragraph "a" of this section are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

c. **Extension of deadline.** HDS may extend the deadline for all applicants because of acts of God such as floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed, and included as the first page of the application package.

Checklist

- ___ Checklist for a complete application;
- ___ One original application signed in black ink and dated plus two copies;
- ___ A completed SPOC certification with the date of SPOC contact entered in item 16 page 1 of SF 424;
- ___ The original and both copies of the application include the following:
- ___ SF 424 (The original application will have the word "Original" hand printed in bold block letters at the top of its SF 424);
- ___ SF 424A;
- ___ Budget Justification;
- ___ SF 424B;
- ___ Certification Regarding Anti-Lobbying;
- ___ Program Narrative Statement with maximum of 30 single-spaced pages;
- ___ Supporting Documents.

(Catalog of Federal Domestic Assistance Number 13.550, Transitional Living Program for Homeless Youth.)

Dated: May 10, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 17, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

Appendix A&B

APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED		Applicant Identifier	
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE		State Application Identifier	
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code)		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [][] - [][][][][][][][][]			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____			A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____		
			9. NAME OF FEDERAL AGENCY:		
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [][][] a [][][]			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
TITLE:					
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):					
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant b. Project			
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____			
b. Applicant	\$.00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372			
c. State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
d. Local	\$.00				
e. Other	\$.00				
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
g. TOTAL	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No			
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED					
a. Typed Name of Authorized Representative			b. Title		c. Telephone number
d. Signature of Authorized Representative					e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs**SECTION A — BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(4)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-86)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
13. Federal		\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				(e) Fourth
	(b) First	(c) Second	(d) Third		
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and,
- (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix C—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905

Alaska

None

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 542-5004

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445-0613

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Reporting Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization

Authorized Signature

Title

Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management

Division, Room 341F, HHH Building, 200 Independence Avenue, SW., Washington, DC., 20201-0001

Connecticut

Under Secretary

Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727-9111

Florida

Karen McFarland, Director of Intergovernmental Coordination, Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 856-3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085

Idaho

None

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725

Kansas

None

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

Louisiana

None

Maine

State Single Point of Contact
Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tele. (301) 225-4490

Massachusetts

State Single Point of Contact,
Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Tel. (617) 727-3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Tel. (517) 375-1838

Note: Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911, Tel. (517) 334-6190

Minnesota

None

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 421 West Pascagoula Street, Jackson, Mississippi 39206, Tel. (601) 960-4282

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Tel. (406) 444-5522

Nebraska

None

Nevada

Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2658

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0435

South Dakota

Susan Comer, State Clearinghouse
Coordinator, Office of the Governor, 500
East Capitol, Pierre, South Dakota 57501.
Tel. (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact,
State Planning Office, 500 Charlotte
Avenue, 309 John Sevier Building,
Nashville, Tennessee 37219, Tel. (615) 741-
1676

Texas

Ralph Boeker, Jr., Office of Budget and
Planning, Office of the Governor, P.O. Box
12428, Austin, Texas 78711, Tel. (512) 463-
1778

Utah

Dale Hatch, Director, Office of Planning and
Budget, State of Utah, 116 State Capitol
Building, Salt Lake City, Utah 84114, Tel.
(801) 533-5245

Vermont

Bernard D. Johnson, Assistant Director,
Office of Policy Research & Coordination,
Pavilion Office Building, 109 State Street,
Montpelier, Vermont 05602, Tel. (802) 828-
3326

Virginia

None

Washington

Catherine Townley, Coordinator,
Intergovernmental Review Process,
Department of Community Development,
9th and Columbia Building, Olympia,
Washington 98504-4151, Tel. (206) 753-4978

West Virginia

Mr. Fred Cutlip, Director, Community
Development Division Governor's Office of
Community and Industrial Development,
Building #6, Room 553, Charleston, West
Virginia 25305, Tel. (304) 348-4010

Wisconsin

James R. Klausner, Secretary, Wisconsin
Department of Administration, 101 South
Webster Street, GEF 2, P.O. Box 7864,
Madison, Wisconsin, 53707-7864, Tel. (608)
266-1741

Note: Please direct correspondence and
question to: Thomas Krauskopf, Federal-State
Relations Coordinator, Wisconsin
Department of Administration

Wyoming

Ann Redman, State Single Point of Contact,
Wyoming State Clearinghouse, State
Planning Coordinator's Office, Capitol
Building, Cheyenne, Wyoming 82002, Tel.
(307) 777-7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget
and Management Research, Office of the
Governor, P.O. Box 2950, Agana, Guam
96910, Tel. (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and
Budget Office, Office of the Governor,
Saipan, CM, Northern Mariana Islands
96950

Palau

None

Puerto Rico

Patria Custodio/Israel Soto Marrero,
Chairman/Director, Puerto Rico Planning
Board, Minillas Government Center, P.O.
Box 41119, San Juan, Puerto Rico 00940-
9985, Tel. (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of
Management and Budget, No. 32 & 33
Kongens Gade, Charlotte Amalie, V.I.
00802, Tel. (809) 774-0750

**Appendix D—Department of Health and
Human Services, Office of Human
Development Services, Administration for
Children, Youth and Families, Family and
Youth Services Bureau**

Regional Contacts**Region I**

Richard Stirling, Office of Human
Development Services, John F. Kennedy
Federal Building, Government Center,
Boston, MA 02203, (617) 565-1138

Region II

Dennis Coughlin, Office of Human
Development Services, 26 Federal Plaza,
New York, NY 10278, (212) 264-2974

Region III

David Lett, Office of Human Development
Services, 3535 Market Street, Philadelphia,
PA 19104, (215) 596-1224

Region IV

John Jordan, Office of Human Development
Services, 101 Marietta Tower, Suite 903,
Atlanta, Georgia 30313, (404) 331-2134

Region V

William Sullivan, Office of Human
Development Services, 105 West Adams,
21st Floor, Chicago, Illinois 60605, (312)
353-4241

Region VI

S. M. (Pat) Murphy, Office of Human
Development Services, 1200 Main Tower,
Dallas, TX 75202, (214) 767-2976

Region VII

Stephen Nash, Office of Human Development
Services, 601 East 12th Street, Room 384,
Kansas City, MO 64106, (816) 426-5401

Region VIII

Charles Graham, Office of Human
Development Services, 1961 Stout Street,
Denver, CO 80294, (303) 844-3106

Region IX

Roy Fleischer, Office of Human Development
Services, 50 United Nations Plaza, San
Francisco, CA 94102, (415) 556-6153

Region X

Richard McConnell, Office of Human
Development Services, 2201 Sixth Avenue,
Mail Stop RX 32, Seattle, WA 98121, (206)
442-0482

Appendix E—Regional Youth Contacts

Region I: Sue Rosen, Office of Human
Development Services, John F. Kennedy
Federal Building, Room 2011, Boston,
Massachusetts 02203 (CT, MA, ME, NH, RI,
VT), (617) 565-1144

Region II: Dennis Coughlin, Office of Human
Development Services, 26 Federal Plaza,
Room 4149, New York, NY 10278 (NJ, NY,
PR, VI), (212) 264-2974

Region III: David Lett, Office of Human
Development Services, 3535 Market Street,
Post Office Box 13714, Philadelphia, PA
19101 (DC, DE, MD, PA, VA, WV), (215)
596-1224

Region IV: Viola Brown, Office of Human
Development Services, 101 Marietta Tower,
Suite 903, Atlanta, GA 30323 (AL, FL, GA,
KY, MS, NC, SC, TN), (404) 221-2128

Region V: William Sullivan, Office of Human
Development Services, 105 West Adams,
23rd Floor, Chicago, IL 60603 (IL, IN, MI,
MN, OH, WI), (312) 353-4241

Region VI: Eddie Falcon, Office of Human
Development Services, 1200 Main Tower,
20th Floor, Dallas, TX 75202 (AR, LA, NM,
OK, TX), (214) 767-6596

Region VII: Steve Nash, Office of Human
Development Services, Federal Office
Building, Room 384, 601 East 12th Street,
Kansas City, MO 64106 (IA, KS, MO, NE),
(816) 426-5401

Region VIII: Juan Cordova, Office of Human
Development Services, Federal Office
Building, 1961 Stout Street, 9th Floor,
Denver, CO 80294 (CO, MT, ND, SD, UT,
WY), (303) 844-3106

Region IX: Ray Myrick, Office of Human
Development Services, 50 United Nations
Plaza, San Francisco, CA 94102 (AZ, CA,
HI, NV, American Samoa, Guam, Northern
Mariana Islands, Marshall Islands,
Federated States of Micronesia, Palau),
(415) 556-6178

Region X: Steve Ice, Office of Human
Development Services, 2201 Sixth Avenue,
Mail Stop RX 32, Seattle, WA 98121 (AK,
ID, OR, WA), (206) 442-0482

**Appendix F—Independent Living State
Coordinators**

Carol Fritchett, AK Div. of Family, and Youth
Service, P.O. Box H-05, Juneau, AK 99811,
(907) 465-3633

Carol Shanahan, AL Dept. of Human
Resources, 50 Ripley St., Montgomery, AL
36130, (205) 242-9531

Becky Wright, AR Div. of Family, and Youth
Services, P.O. Box 1437, Slot 808, Little
Rock, AR 72203, (501) 682-8453

Bob Gilfillan, AZ Dept. of Economic Security,
1400 West Washington, Phoenix, AZ 85007,
(602) 542-5120

Loren Suter, CA Dept. of Social Services, 744
P St. M.S. 17-18, Sacramento, CA 95814,
(916) 445-6410

Marlee Tougaw, CO Dept. of Social Services,
1575 Sherman St., Denver, CO 80203, (303)
866-5949

Bill Pinto, DCYS, 170 Sigourney St., Hartford, CT 06105, (203) 566-3838

Sandra Williams, Dept. of Human Services, Independent Living Program, 1427 21st St., NW., Washington, DC 20036 (202) 727-1534

Linda Homan-Lane, Div. of Child Protective Svcs., 1825 Faulkland Rd., Wilmington, DE 19805, (302) 633-2659

Barbara Winn, FL Dept. of Health Rehab. Svcs., 1317 Winewood Blvd., Tallahassee, FL 32301, (904) 488-6000

Sheila Joyner-Pritchard, Div. of Family Children Svcs., 878 Peachtree St., NE., #502, Atlanta, GA 30309, (404) 894-5303

Linda Yoneyama, HA Dept. of Human Svcs., P.O. Box 339, Honolulu, HI 96809, (808) 548-5334

Alice Fisher, IA Bureau of ACFS, Hoover Building, Des Moines, IA 50319, (515) 281-5658

Jane Knowlton, ID Dept. of Health Welfare, 450 W. State St., Boise, ID 83720, (208) 334-5695

Linda Coon, IL Dept. of Children Fam. Svcs., 100 W. Randolph St., #6-200, Chicago, IL 60601, (312) 814-4111

Pat Davis, IL Dept. of Child. Fam. Svcs., 406 E. Monroe Station, #75, Springfield, IL 62701, (217) 785-5888

Sue Stranis, IN Dept. of Public Welfare, 141 S. Meridian St., 6th Floor, Indianapolis, IN 46205, (317) 232-4420

Janet Davenport, Kansas SRS-Youth Svcs., Smith Wilson Bldg., 300 S.W. Oakley, Topeka, KS 66606, (913) 296-7030

Mike Yocum, KY Dept. of Social Svcs., Children Youth Svcs., 6 W., 275 E. Main St., Frankfort, KY 40621, (502) 564-2136

Paulette McCary, Office of Community Services, P.O. Box 3318, Baton Rouge, LA 70821, (504) 421-4860

Nora Etkin, MA Dept. of Social Svcs., 150 Causeway St., 11th Floor, Boston, MA 02114, (617) 727-0900 Ext. 483

Bill Lunsford, MD Dept. of Human Resources, Saratoga State Center, Baltimore, MD 21201, (301) 333-0208

Nancy Goddard, ME Dept. of Human Svcs., State House, Station 11, Augusta, ME 04333, (207) 289-5060

Jane Swanson, MI Dept. of Social Svcs., 300 S. Capitol Ave., Lansing, MI 48909, (517) 335-3700

Lyle Johnson, MN Dept. of Social Svcs., 444 Lafayette Rd., St. Paul, MN 55155-3832, (612) 296-5283

Nancy Grant, MO Div. of Family Svcs., P.O. Box 88, Jefferson City, MO 65103, (314) 751-2427

Anne Sims, Dept. of Human Svcs., Office of Social Svcs., P.O. Box 352, Jackson, MS 39205, (601) 354-6656

Judy Williams, Dept. of Family Svcs., P.O. Box 8095, 48 N. Last Chance Gulch, Helena, MT 59604, (406) 444-5900

Sylvia Stikeleather, NC Div. of Social Svcs., 325 N. Salisbury St., Raleigh, NC 27611, (919) 733-7672

Kathy Neideffer, ND Dept. of Human Svcs., State Capitol-Judicial Wing, Bismark, ND 58505, (701) 224-2316

Mark Mitchell, NE Dept. of Social Svcs., 301 Centennial Mall South, State Office Bldg., Lincoln, NE 68509, (402) 471-9211

Dorothy Doucette, New Hampshire Div. for, Children & Youth Svcs., 6 Hazen Drive, Concord, NH 03301, (603) 271-4720

Lue Reynolds, Div. of Youth & Family Svcs., Office of Statewide Oper., 1 S. Montgomery St., Trenton, NJ 08625, (609) 984-3304

Michelle Suskind, New Jersey DIFS, 1 S. Montgomery St., CN 717, Trenton, NJ 08625, (609) 984-4331

Joel Hopko, Dept. of Human Svcs., P.O. Box 2348, 20009 Pacheco St., Santa Fe, NM 87504, (505) 827-8403

Ginnie Hough, NV State Welfare, Social Services, 2527 North Carson St., Carson City, NV 89710, (702) 885-4137

Jay North, NY Div. of Fam. & Child. Svcs., 40 N. Pearl St., Arcade 3, Albany, NY 12243, (518) 432-2542

Ann Louise Maxwell, OH Dept. of Human Svcs., 30 E. Broad, 30th Floor, Columbus, OH 43266, (614) 466-8510

Kathryn Simms, OK Dept. of Human Svcs., P.O. Box 25352, Oklahoma City, OK 73125, (405) 521-4366

Lee Cornforth, OR Childrens Serv. Div., 198 Commercial St., SE, Salem, OR 97310, (503) 378-4452

Bob Diethorn, PA Dept. of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105, (717) 787-3984

Judith Willard, RI Dept. of Child. & Fam., 610 Mt. Pleasant Ave., Bldg. 10, Providence, RI 02908, (401) 457-4513

Romona Foley, SC Dept. of Social Svcs., P.O. Box 1520, Columbia, SC 29202, (803) 734-5968

Duane Jenner, SD Dept. of Social Svcs., 700 Governor's Drive, Pierre, SD 57501, (605) 773-3227

Judy Smith, TN Dept. of Human Svcs., 400 Deaderick St., 14th Floor, Nashville, TN 37219, (615) 741-3251

Thomas Chapmond, TX Dept. of Human Svcs., P.O. Box 2960, M.C. 538-W, Austin, TX 78769, (512) 450-3309

Susan Johnson, TX Dept. of Human Svcs., P.O. Box 2960 (538-W) Austin, TX 78769, (512) 450-3289

Faye Price, UT Dept. of Social Svcs., 120 N. 200 West, Salt Lake City, UT 84103, (801) 538-4100

Beverly Buran, VA Dept. of Social Svcs., 8007 Discovery Dr., Richmond, VA 23229, (804) 662-9081

Jean Fiorito, VT Dept. of Social Svcs., 103 S. Main St., Waterbury, VT 05676, (801) 241-2131

Deborah Buford, WA Dept. of Social & Health Svcs., Mail Stop OB-41, Olympia, WA 98504, (206) 721-4279

Ava Michaud, WI Dept. of Health & Soc. Svcs., P.O. Box 7851, Madison, WI 53707, (608) 266-6874

Patricia Moore-Moss, Div. of Human Svcs., Bldg. 6 State Capital Complex, Charleston, WV 25305, (304) 348-7980

Robert T. Landes, WY Div. of Social Svcs., 320 Hathaway Bldg., Cheyenne, WY 82002, (307) 777-6069

[FR Doc. 90-14054 Filed 6-15-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor and Tobacco Sale or Distribution Ordinance; Ysleta Del Sur Pueblo Tribe, Tx.

May 29, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C., 1161. I certify that the Ysleta Del Sur Pueblo Tribal Liquor Ordinance adopted on March 21, 1990, Relating to the Use and Distribution of Liquor was duly adopted by the Ysleta Del Sur Pueblo Tribe by Resolution TC-10-90 and Ordinance No. 02. The Ordinance provides for the regulation of possession, consumption, and importation of alcohol under the jurisdiction of the Ysleta Del Sur Pueblo of Texas.

DATES: This Ordinance is effective as of June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Maria Mendoza, Management Analyst, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., Washington, DC 20240; telephone (202) 208-4400, (FTS) 268-4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Ysleta Del Sur Tribe, acting in accordance with the customary law and practice of the Ysleta Del Sur Pueblo hereby adopts the following ordinance governing the possession, consumption and importation of alcohol into the Ysleta Del Sur Pueblo.

Section 1. Definitions

As used in this ordinance, the following definitions shall apply unless the context clearly indicates otherwise:

(a) "Barter" or "Bartering" means the trading for any commodity, act or consideration whether or not there is intrinsic value in the item traded.

(b) "Council" means the duly elected Tribal Council of the Ysleta Del Sur Pueblo, as defined in Section 101 of the Act of August 18, 1987, 101 Stat. 666, Public Law No. 100-89.

(c) "Governor" means the duly elected Governor of the Ysleta Del Sur Pueblo in accordance with the traditional form of government.

(d) "Liquor" includes all varieties of liquid, semisolid or solid substance containing alcohol, whether brewed, fermented, formulated or distilled which is intended for human consumption.

(e) "Minor" means any person under the age of twenty-one (21) years.

(f) "Possession or Possessing" means having on ones person, vehicle or other property and includes constructive possession through control without regard to ownership.

(g) "Pueblo" means the Ysleta Del Sur Pueblo, as defined in sections 101 and 102 of the Act of August 18, 1987, 101 Stat. 666, Public Law No. 100-89.

(h) "Purchase" includes the exchange, barter, traffic, receipt with or without consideration in any form.

(i) "Reservation" means lands within El Paso and Hudspeth Counties, Texas, that are defined as reservation lands by section 101 of the Act of August 18, 1987, 101 Stat. 666, Public Law No. 100-89.

(j) "Sale" means the exchange, barter, traffic, donation with or without consideration, in addition to the selling, supplying or distributing by any means, by any person, to any person.

Section 2. Relation to Other Pueblo Regulations

Any and all prior ordinances, resolutions, regulations or other form of control of the Ysleta Del Sur Pueblo, whether written or unwritten, which authorize, prohibit or deal with the sale of alcohol are hereby repealed and have no further force and effect. No Pueblo ordinance or regulation shall be applied in a manner inconsistent with the provisions of this ordinance.

Section 3. Prohibition

The introduction onto the Reservation for resale, wholesale purchase, sale and dealing in liquor other than by the Pueblo or an enterprise of the Pueblo is prohibited. Possession of liquor on the Reservation by any person now prohibited by Federal law shall be lawful so long as possession is in conformity with this ordinance and with state law. Federal Indian liquor laws (18 U.S.C. 1161 and 1154) shall apply to any act or transaction not authorized by this ordinance and state law and violators shall be subject to federal prosecution, as well as Pueblo penalties as provided in this ordinance.

Section 4. Conformity with State Laws

Pueblo standards for liquor transactions and possession and consumption of liquor shall meet or exceed those required by the State of Texas, including but not limited to:

a. *Hours of Sale: Wine and Beer and Mixed Beverages.* The Pueblo or an

Enterprise of the Pueblo may sell or offer for sale wine and beer and mixed beverages between 7 a.m. and 2 a.m. on any day except Sunday. On Sunday, the Pueblo or an enterprise of the Pueblo may sell or offer for sale wine and beer and mixed beverages between 12 noon and 2 a.m.

b. *Hours of Consumption.* A person is in violation of this ordinance if he consumes or possesses with intent to consume an alcoholic beverage in a public place on the Reservation at any time on Sunday between 2 a.m. and 12 noon or on any other day between 2 a.m. and 2 a.m.

c. *Purchase of Alcohol by a Minor.* A minor commits an offense if he purchases an alcoholic beverage.

d. *Sale to Minors.* Sale of an alcoholic beverage to a minor by the Pueblo or an enterprise of the Pueblo is prohibited.

e. *Consumption of Alcohol by a Minor.* Consumption of an alcoholic beverage by a minor is prohibited.

f. *Possession of Alcohol by a Minor.* Possession of an alcoholic beverage by a minor is prohibited unless: (1) such minor is in possession of the alcoholic beverage while in the course and scope of his employment and he is an employee of the Pueblo or an enterprise of the Pueblo.

g. *Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor.* A person commits a violation of this ordinance if he knowingly purchases an alcoholic beverage for or knowingly gives or makes available an alcoholic beverage to a minor.

h. *Misrepresentation of Age by a Minor.* A minor is in violation of this ordinance if he falsely states that he is 21 years of age or older or presents any document that indicates he/she is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

i. *Employment of Minors.* The Pueblo or an enterprise of the Pueblo shall not employ any person under 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so. The Pueblo or an enterprise of the Pueblo may, however, employ a person under 18 years of age to work in any capacity other than the actual selling, preparing, serving or handling of liquor.

Section 5. Prohibition of Sales During Emergencies or Dates and Times Established by Council

The Governor of the Ysleta Del Sur Pueblo, by authority of Tribal resolution, may on an emergency basis and for a period of time not exceed five (5) business days, by written order, act, directive or notice, prohibit the sale of liquor until such emergency order can be

considered by the Council which may, in its discretion, terminate or extend such order for any length of time it deems necessary, or may issue emergency rules, regulations, directions or orders concerning the sale of liquor which will be valid during the stated emergency period. The Council may likewise issue orders prohibiting or limiting the sale of liquor for any period not to exceed seventy-two (72) consecutive hours.

Section 6. Sovereign Immunity Preserved

Nothing in this ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Ysleta del Sur Pueblo. No officer, manager or employee of an enterprise of the Pueblo shall be authorized nor shall attempt to waive the sovereign immunity of the Pueblo.

Section 7. Penalty

Any person or entity purchasing, possessing, selling, bartering, or otherwise trafficking in liquor on the Reservation is in violation of this ordinance or any rule or regulation adopted pursuant to this ordinance shall be subject to a fine or forfeiture, as applicable, of not more than Five Thousand Dollars (\$5,000) and may be barred from admission to the Reservation through due process of law. In addition, persons or entities subject to the full jurisdiction of the Pueblo may be subject to such other appropriate actions as the council may determine. All contraband merchandise shall be confiscated by the Pueblo and disposed of as directed by the Council.

Section 8. Severability

If any clause, part or section of this ordinance shall be adjudged invalid, such judgment shall not affect or invalidate the remainder of the ordinance but shall be confined in its operation to the clause, part, or section directly involved in controversy in which such judgment was rendered.

Section 9. Disclaimer

Nothing in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians by Ysleta del Sur Pueblo except to the extent allowed by an applicable present or future Acts of Congress or any applicable laws.

Section 10. Regulations

The Council shall have the authority to adopt and enforce rules and regulations to implement this ordinance and to further the purpose thereof.

Section 11. Enforcement

This ordinance shall be enforced by the Council, or any other Agency vested with such enforcement authority by resolution of the Council.

Section 12. Effective Date

This ordinance shall be effective upon the date that the Secretary of the Interior certifies this ordinance and publishes it in the Federal Register.

Section 13. Amendment

This ordinance may be amended by a majority vote of the Council subject to approval by the Secretary of Interior.

Walter R. Mills,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 90-13920 Filed 6-15-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM-030-00-4212-13; NMNM 82657]

Availability of Plan Amendment/Notice of Realty Action for a Proposed Exchange to Resolve a Trespass Ranch Headquarters, Grant County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Plan Amendment/Notice of Realty Action.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the following parcel of land has been evaluated through a Planning Amendment/Environmental Assessment and found suitable for disposal exchange under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716). The parcel is described as follows:

T. 26 S., R. 15 W., NMPM
Sec. 34, SE¼SW¼

Containing 40 acres, more or less.

This 40-acre parcel will be added to BLM/The Nature Conservancy (TNC) exchange pool to resolve a trespass ranch headquarters located on public land.

Based on the analysis of potential environmental impacts, it was determined that impacts are not significant (Finding of No Significant Impacts (FONSI)). Based on the FONSI, it has been determined that an environmental impact statement is not required. A plan amendment was prepared because the proposed Action was not in conformance with a currently valid land use plan. The proposed Action is the BLM's preferred alternative and is the proposed Plan to exchange a 40-acre parcel of public land

on which the trespass ranch headquarters are located and add the parcel to the BLM/TNC exchange pool.

The land exchange pool is used whenever practical to facilitate land exchanges and reduce unit costs. TNC will sell the public land to the occupant and offer private land in the exchange pool that has high or exceptional natural resource value to BLM.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights and reservation of record including the following: Electric distribution line right-of-way NMNM 52989 and County road right-of-way NMNM 52981.

The publication of this Notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the Federal Register or upon publication of a Notice of Termination.

DATES: Interested parties may submit comments regarding this realty action through August 6, 1990, to District Manager, Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. The Proposed Plan has a 30-day protest period as required by BLM planning regulations (43 CFR 1610.5-2).

Any person who participated in the planning process and has an interest which may be adversely affected by the Planning Amendment may submit a protest through July 23, 1990.

Any protest must be filed with the Director (760), Bureau of Land Management, Department of the Interior, 18th and C Streets, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005 or at (505) 525-8228.

SUPPLEMENTARY INFORMATION: TNC will sell the public land to the occupant and offer private land in the exchange pool that has high or exceptional natural resource value to BLM. After the resolution of any protest and Governor's

consistency review, the Proposed Plan would become the Approved Plan and BLM decision to complete the exchange. The decision will be documented in a Decision Record signed by the State Director. Copies of the Proposed Plan Amendment/Environmental Assessment have been distributed to a mailing list of identified parties. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico and the Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico.

Dated: June 12, 1990.

Malcolm J. Schnitker,

Acting State Director.

[FR Doc. 90-14018 Filed 6-15-90; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service**Receipt of Applications for Permits**

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749012

Applicant: International Animal Exchange, Inc., Ferndale, MI

The applicant requests a permit to export one pair of captive born Bengal tigers (*Panthera tigris*) to African Safari, Valsequillo, Puebla, Mexico, for captive breeding and display purposes.

PRT 749010

Applicant: International Animal Exchange, Inc., Ferndale, MI

The applicant requests a permit to export one pair of captive born siamang gibbons (*Hylobates syndactylus*) to the Jerusalem Biblical Zoo, Ltd., Jerusalem, Israel, for captive breeding and display purposes.

PRT 749302

Applicant: Life Fellowship Bird Sanctuary, Seffner, FL

The applicant requests a permit to import one wild-born St. Vincent's parrot (*Amazona quilingii*) from Mr. & Mrs. H.M. Tynan, White Rock, Canada, for captive breeding purposes. The bird was acquired by the Tynan's in 1972 on the Island of St. Vincent and has been in their possession since that time. It is now being offered for sale to Life Fellowship.

PRT 749301

Applicant: Jungle Larry's Safari Land, Inc., Naples, FL

The applicant requests a permit to export and possibly sell in foreign commerce one captive born male tiger (*Panthera tigris*) to Clubb-Chipperfield, England, for enhancement of propagation or survival of the species. PRT 749209

Applicant: William Ray Sain, Jr., Manchester, TN

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purposes of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 12, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-13988 Filed 6-15-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for renewal and amendment of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (26 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR parts 17 and 18).

PRT-685009

Applicant

Name: Mote Marine Laboratory
Address: 1600 City Island Park, Sarasota, FL 33577

Type of Permit: Scientific Research.
Name and Number of Animals: 200 Bottlenosed dolphins, (*Tursiops truncatus*), 10 harassments per animal, and up to 200 harassments of an

undetermined number of West Indian manatees (*Trichechus manatus*).

Summary of Activity to be Authorized: The applicant proposes to take (harass) these animals during population surveys of wild dolphins and wild manatees using 35mm hand held cameras, a color video display echo sounder, battery operated fathometers and scanning sonar. The applicant also requests authorization to use the detection equipment on captive manatees. The applicant has previously received Endangered Species/ Marine Mammal permits PRT-2-9757, PRT-685000 and PRT-690353 for authorizations for survey of wild dolphins and manatees from 1983 to 1989. Annual reports have indicated that there was no taking (harassment) under these permits.

Period of Activity: Indefinite
Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 4401 N. Fairfax Drive, room 430, Arlington, VA 22203.

Dated: June 12, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-13989 Filed 6-15-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290; Sub-No. 87X]

Norfolk and Western Railway Co.— Discontinuance Exemption—in Mingo County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 3.8-mile line of railroad between milepost FP-0.0, at Four Pole Junction,

and milepost FP-3.8, at Isaban, in Mingo County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 18, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by June 28, 1990. Petitions for reconsideration must be filed by July 9, 1990, with:

Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Richard W. Kienle, Norfolk Southern
Corporation, Three Commercial Place,
Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13924 Filed 6-15-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290; Sub-No. 88X]

**Norfolk and Western Railway Co.—
Discontinuance Exemption—in
Wyoming County, WV**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over its 1.5-mile line of railroad between mileposts AM-0.0 and AM-1.5, at Amigo, in Wyoming County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective July 18, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by June 28, 1990. Petitions for reconsideration must be filed by July 9, 1990, with:

Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants representative:

Richard W. Kienle, Norfolk Southern
Corporation, Three Commercial Place,
Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13925 Filed 6-15-90; 8:45 am]

BILLING CODE 7035-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB-12; Sub-No. 128X]

**Southern Pacific Transportation, Inc.—
Abandonment Exemption—in El
Dorado County, CA**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.87-mile line of railroad between milepost 150.013, near Placerville, and milepost 145.14, near Diamond Springs, in El Dorado County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 18, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 28, 1990.³

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative(s):

Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 6, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13926 Filed 6-15-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; Sub-No. 126X]

Southern Pacific Transportation, Inc.—Abandonment Exemption—in Fresno County, CA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 13.867-mile line of railroad between milepost 279.973, near Huron, and milepost 293.837, near Ora, in Fresno County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either

is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 18, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 28, 1990.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative(s):

Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 22, 1990.

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 51 C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 41 C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 7, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13927 Filed 6-15-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; Sub-No. 127X]

Southern Pacific Transportation, Inc.—Abandonment Exemption—in Imperial County, CA

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 11.72-mile line of railroad between milepost 702.72, near Holtville, and milepost 691.0, near Orita, in Imperial County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 18, 1990 (unless stayed pending reconsideration). Petitions to stay that

do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 28, 1990.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 1990, with:

Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative(s):

Gary A. Laasko, Southern Pacific
Building, room 846, One Market Plaza,
San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 11, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 90-14028 Filed 6-15-90; 8:45 am]
BILLING CODE 7035-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 1 p.m., Sunday July 8, 1990.

Place: Courtyard By Marriott, 4710 Pearl East Circle, Boulder, Colorado.

Status: Open.

Matters to be Considered: Reports from the four committees of the Advisory Board—Academy, Community Corrections, updates on legislation that may impact the agency (i.e., Hughes Bill—H-4158), discussion of issues regarding intermediate punishments/sanctions and the Community Corrections Division, update on the Institute's FY 1992 budget submission, report on recent NIC public hearings.

Contact Person for More Information: M. Wayne Huggins, Director, (202) 307-3106.

M. Wayne Huggins.

Director.

[FR Doc. 90-14023 Filed 6-15-90; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-42]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: July 17, 1990, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The

Committee, chaired by Mr. Phil M. Condit, is comprised of 19 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

July 17, 1990.

8:30 a.m.—Opening Remarks.

8:45 a.m.—Welcome/Fiscal Year 1991

Budget Status.

9 a.m.—NASA's Research Role in Competitiveness.

10:45 a.m.—NASA's Facility Role in Competitiveness.

12:45 p.m.—Fiscal Year 1992 Preliminary Budget.

2:15 p.m.—Status and Plans for Ad Hoc Studies.

3 p.m.—Summary Discussion.

4 p.m.—Adjourn.

Dated: June 12, 1990.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 90-14007 Filed 6-15-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Early Input to Part 20 Regulatory Guide Development Effort; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will discuss mechanisms for early input to the development effort for the Regulatory Guides implementing the revised 10 CFR part 20 rule with representatives of the Nuclear Utility Management and Resources Council (NUMARC).

DATE/TIME: Tuesday, July 10, 1990; 9 a.m.—12:30 p.m.

ADDRESSES: Nuclear Regulatory Commission Headquarters, One White Flint North (11555 Rockville Pike, Rockville, Maryland 20852), room 4B13.

FOR FURTHER INFORMATION CONTACT: Harold T. Peterson, Jr., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3640 (FTS 492-3640).

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to explore mechanisms whereby industry groups, such as the Nuclear Utility Management and Resources Council, and other

interested groups can participate and provide early input into the development of NRC Regulatory Guides to implement the recently approved revision of 10 CFR part 20—Standards for Protection Against Radiation. Although this meeting is primarily intended to solicit comments, suggestions, and information from the nuclear industry, other interested parties are welcome to attend and participate.

This meeting will be open to the public and any member of the public wishing to file a written statement may send a copy of the statement to the person designated under "For Further information contact." Further information may be obtained by calling Harold Peterson at the telephone number given above.

Dated at Rockville, Maryland, this 11th day of June 1990.

For the Nuclear Regulatory Commission.
Bill M. Morris,

*Director, Division of Regulatory Applications,
Office of Nuclear Regulatory Research.*

[FR Doc. 90-14030 Filed 6-15-90; 8:45 am]

BILLING CODE 7590-01-M

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Board for Senior Executive Service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following new appointments to the NRC Performance Review Board (PRB).

New Appointees:

Edward L. Jordan, Director, Office for Analysis and Evaluation Operational Data.
Dennis K. Rathbun, Director, Congressional Affairs, Office of Governmental and Public Affairs.

Themis P. Speis, Deputy Director for Research, Office of Nuclear Regulatory Research.

In addition to the above appointments, the following members are continuing on the PRB:

Robert F. Burnett, Director, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards.
Frank J. Congel, Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulation.

James A. Fitzgerald, Assistant General Counsel for Adjudications and Opinions, Office of the General Counsel.

James F. McDermott, Deputy Director, Office of Personnel.

Patricia G. Norry, Director, Office of Administration.

Carl J. Paperiello, Deputy Regional Administrator, Region III.

William T. Russell, Associate Director for Inspection and Technical Assessment, Office of Nuclear Reactor Regulation.
Steven A. Varga, Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

William B. Kerr, Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, continues to serve as an ex officio non-voting member.

The following individuals will serve as members of the NRC Performance Review Board (PRB) Panel. The PRB Panel was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members.

New Appointee:

James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations.

In addition to the above new appointment, the following individuals will continue to serve on the PRB Panel:

Harold R. Denton, Director, Office of Governmental and Public Affairs.
Hugh L. Thompson, Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

FOR FURTHER INFORMATION CONTACT:

James M. Taylor, Chairman, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-1700.

Dated at Rockville, Maryland, this 9th day of June 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,
Chairman, Executive Resources Board.

[FR Doc. 90-14031 Filed 6-15-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Houston Lighting & Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX—Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 18 and 6 to Facility Operating License Nos. NPF-76 and NPF-80 issued to Houston Lighting &

Power Company which consisted of changes to the Final Safety Analysis Report related to the operation of the South Texas Project, Units 1 and 2 located in Matagorda County, Texas.

The amendments are effective as of the date of issuance.

The amendments revised the Technical Specification 5.3.1 to permit the use of fuel with maximum enrichments of 4.5 weight percent Uranium 235.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the *Federal Register* on April 4, 1990 (55 FR 12613). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated March 1, 1990, (2) Amendment No. 16 to License No. NPF-76, Amendment No. 6 to License No. NPF-80, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document room, 2120 L Street NW., Washington, DC, and at the local public document rooms located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 11th day of June 1990.

For the Nuclear Regulatory Commission.
George F. Dick, Jr.,
Project Manager, Project Directorate IV-2,
Division of Reactor Projects III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.
[FR Doc. 90-14032 Filed 6-15-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-029]

**Yankee Nuclear Power Station;
Consideration of Issuance of
Amendment to Facility Operating
License and Proposed No Significant
Hazards Consideration Determination
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to the Yankee Atomic Electric Company (the licensee) for operation of the Yankee Nuclear Power Station (YNPS) located in Franklin County, Massachusetts.

The proposed amendment would incorporate wording from Standard Westinghouse Technical Specifications into YNPS's LCO Specifications. This wording allows physics testing to be conducted with the number of Operable Power Range and Intermediate Power Range Neutron Flux channels being determined by the LCO requirements of technical specifications instead of the specific number of channels presently specified.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

This change is requested to correct an oversight made in an earlier proposed change and is needed to allow Yankee to perform its standard testing program for new reload cores. This proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will allow Yankee to perform its standard physics testing program for reactor core to ensure that the plant's response to transients is consistent with analytical evaluation.

2. Create the possibility of a new or different kind of accident from any previously evaluated. This proposed change will allow Yankee to conduct its standard physics testing program with more of the plant's nuclear instrumentation required Operable with reduced setpoints than previously required.

3. Involve a significant reduction in a margin of safety. This proposed change will not modify the existing requirement that the trip setting of Operable nuclear channels be set at less than or equal to 25% of Rated Thermal Power and will increase the number of Operable nuclear channels with reduced setpoints from the minimum of four during physics testing.

Based on the discussion above, it is concluded that there is reasonable assurance that the operation of the Yankee plant, consistent with the proposed technical specification, will not endanger the health and safety of the public.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 20, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is

that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Director, PDI-3: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Bolton, MA 01367, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 31, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at Greenfield Community College, College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 12th day of June, 1990.

For the Nuclear Regulatory Commission,
Patrick M. Sears,
Project Manager, Project Directorate I-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.
[FR Doc. 90-14033 Filed 6-15-90; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Demonstration Project—Pacer Share: A Federal Productivity Enhancement Program

AGENCY: Office of Personnel
Management.

ACTION: Final notice.

SUMMARY: This action provides for the approval of amendments to the final project plan published November 20, 1987 (52 FR 44782). The amendments were published on March 30, 1990 (55 FR 12079) as proposed changes, with a 30-day public comment period. Changes were to be made final unless any compelling objections were raised. Representatives of the local bargaining units and all other employees covered by the project were notified of the proposed changes and the comment period. There were no objections to the proposed amendment; the two letters of comment that were received expressed concurrence with the proposed changes.

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: At the Sacramento Air Logistics Center, Directorate of Distribution, Ms. Colene Krum, (916) 643-6030; at OPM Dr. Brigitte Schay, (202) 606-2890.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

[FR Doc. 90-13982 Filed 6-15-90; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee on Trade Determination of Closing of Meetings

The Defense Policy Advisory Committee on Trade (DPACT) (including its Executive Committee) has been established to advise the United States Trade Representative and the Secretary of Defense, in accordance with subsection 135(a) of the Trade Act of 1974, as amended (the Act) with respect to the operation of any trade agreement once entered into and with respect to other matters arising in connection with

the administration of the trade policy of the United States.

I, therefore, determine that meetings of the Advisory Committee will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions and with matters listed in section 552(b)(3) of title 5 of the United States Code. Therefore, meetings of the Advisory Committee will be closed to the public unless otherwise determined by the United States Trade Representative or his designee.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90-14020 Filed 6-15-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28102; SR-DGOC-90-01 and SR-DGOC 90-03]

Self-Regulatory Organizations; The Delta Government Options Corp.; Order Approving Proposed Rule Changes Relating to Short-Dated Options and Expiration Date Exercise Procedures

I. Introduction

On February 15, 1990, and March 8, 1990, the Delta Government Options Corporation ("Delta") filed proposed rule changes with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The Commission published notice of the proposals in the Federal Register on March 21 and April 6, 1990.² No comments were received. As discussed below, the Commission is approving Delta's proposals.

II. Description

Under Delta's current rules, all options traded in Delta's system expire on the Saturday after the third Friday of each month.³ Delta's proposals change the day of options expiration to the third Friday of each month. In addition, Delta's proposals establish a new category of options that are issuable only after the third Friday of each month and expire on the first Friday of the following month. This would give Delta's participants the opportunity to trade options through Delta's system

that have a two to three week expiration horizon, and expire towards the beginning of a month.

Delta's proposals also would compress the time period during which participants may exercise options on expiration date.⁴ Under the proposals, Security Pacific would issue a report to all participants listing each expiring option contract by 8 a.m. on the expiration date, which will be either the first or third Friday of each month depending on the series expiring. Similar to Delta's current procedures, this report would reflect the closing price of each option contract on the preceding day. For expiring options, trading in each option contract would cease at 1:30 p.m. for participant-to-participant trades and at 2 p.m. for trades executed through RMJ Options Trading Corporation. At or before 3:30 p.m., Security Pacific would issue another report to each participant listing each expiring option contract in the participant's account. This report would update the preliminary report to reflect trading activity in those options up to the 2 p.m. cut-off time. Each participant must return this report to Security Pacific indicating which option contracts it desires to exercise by 4 p.m. At or before 5 p.m., Security Pacific will issue a final report to participants that reflects each participant's exercise instructions and lists any additional option contracts expiring that day which have been added to the participant's account. Each participant must return a signed copy of this report as updated and corrected to Security Pacific by 6 p.m.

Delta then will determine the number of option contracts for each series of options exercised by and assigned to each participant for settlement on the exercise settlement date. As soon as

practicable after 6 p.m., Security Pacific will issue each participant a report reflecting its gross settlement obligations. Unlike Delta's current procedures, Delta will not exercise automatically any of a participant's in-the-money option contracts unless so directed by the participant.

On the business day immediately following the expiration date, Delta will net each participant's gross settlement obligations to the extent possible and allocate deliver and receive obligations among participants. Each participant then will receive an exercise settlement report reflecting its netted deliver and receive obligations.

III. Delta's Rationale for the Proposals

Delta believes the proposals are consistent with the requirements of the Act in two respects. First, they will permit more utilization of its facilities by those participants who prefer to trade options on a two to three week expiration horizon. In addition, they will provide a more abbreviated exerciser process and will enhance the efficiency of its operations by eliminating the time lag between the moment options contracts are available for exercise on expiration date and the moment of actual exercise.

IV. Discussion

The Commission believes Delta's proposals are consistent with the Act and, in particular, with section 17A. Section 17A provides that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁵ The Commission believes that Delta's proposals are designed to achieve this goal.

Delta's proposals promote the prompt and accurate clearance and settlement of securities transactions by bringing short-dated options on United States treasury securities into the National Clearance and Settlement System. Currently, investors that desire to trade over-the-counter options on United States treasury securities that have a short expiration horizon and expire towards the beginning of a month ("short-dated options") must do so in a relatively labor-intensive, risky and inefficient manner. For example, brokers and dealers compare their trades by manually exchanging confirmation slips, stamp slips that contain agreed-upon terms, and return these slips to one another. Furthermore, because these trades are not netted among the various counterparties, investors bear the

¹ Under Delta's current expiration date exercise procedures, Security Pacific National Trust Company (New York) ("Security Pacific"), Delta's clearing bank, issues to each participant a preliminary report by 8 a.m. on each options expiration date. (All times herein refer to Eastern Standard Time.) This report lists each option in the participant's account that is due to expire that day. Option contracts included in this report are valued at their closing price as of the previous day.

After receiving this report, each participant indicates the option contracts to be exercised and returns the report to Security Pacific by 10 a.m. At 2 p.m., Security Pacific issues a final report to each participant reflecting the participant's exercise instructions. Each participant must return this report, along with any revocation or modification of its exercise instructions, to Security Pacific by 5 p.m. Once returned, these exercise instructions are irrevocable, and the options contracts indicated will be exercised by Delta in accordance with the participant's instructions. In addition, and unless specifically directed otherwise, Delta will exercise automatically all of a participant's option contracts that are in-the-money by a predetermined amount. See Delta Rule 1003.

⁵ See 15 U.S.C. 78q-1(b)(3)(F) (1982).

¹ See 15 U.S.C. 78a(b)(1) (1982).

² See Securities Exchange Act Release Nos. 27795 (March 13, 1990), 55 FR 10566 and 27864 (March 30, 1990), 55 FR 12975.

³ See Delta Rule 101.

burden and risk of settling their trades on a gross basis. Moreover, because there is no interpositioning of a creditworthy third party as an intermediary to these trades, investors are required to bear the credit and liquidity risks posed by their counterparties.

Delta's proposals eliminate the labor-intensive manual confirmation process by providing for automated comparison of these transactions. Delta's netting service also may reduce participants' transaction costs by reducing the number and dollar value of their money and securities deliver and receive obligations.⁶

Finally, under Delta's former rules, options traded through Delta's system expired and were eligible for exercise on the Saturday following the third Friday of a month.⁷ However, because Delta's system was not open for trading on Saturday,⁸ Delta's participants would decide whether to exercise expiring options based on their closing prices on Friday. Thus, Delta's participants could base their decision to exercise expiring options on the most current market prices available for such options.

As noted above, Delta's proposals change the day of options expiration from Saturday to Friday and provide a new options exercise procedure which reflects the fact that trading in expiring options may now occur on the expiration date. This allows Delta's participants to allocate their resources more efficiently in two respects. First, moving the expiration date to a regular business day eliminates the need for participants to staff their offices on the weekend. Second, compressing the options exercise process from eight hours to two hours allows for more efficient and effective processing of option exercises on expiration date. Accordingly, the Commission believes that Delta's proposals are consistent with Section 17A.

V. Conclusion

For the reasons stated above, the Commission finds that Delta's proposals are consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that Delta's

proposed rule changes (SR-DGOC-90-01 and SR-DGOC-90-03) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 11, 1990.

Margaret H. McFarland,
Deputy Secretary.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 12, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Dial Reit, Inc.

Common Stock, \$.01 Par Value (File No. 7-5978)

Nuveen California Municipal Market Opportunity Fund, Inc.

Common Stock, \$.01 Par Value (File No. 7-5979)

Nuveen New York Municipal Market Opportunity Fund, Inc.

Common Stock, \$.01 Par Value (File No. 7-5980)

Lewis Galoob Toys, Inc.

\$1.70 Cumulative Convertible Depositary Exchangeable Preferred Stock, No Par Value (File No. 7-5981)

Alliance Global Environment Fund, Inc.

Common Stock, \$.01 Par Value (File No. 7-5982)

Apple Bancorp, Inc.

Common Stock, \$1.00 Par Value (File No. 7-5983)

Chiles Offshore Corporation

Common Stock, \$.01 Par Value (File No. 7-5984)

Community National Bancorp, Inc.

Common Stock, \$2.00 Par Value (File No. 7-5985)

Templeton Global Utilities, Inc.

Common Stock, \$.01 Par Value (File No. 7-5986)

Thai Capital Fund, Inc.

Common Stock, \$.01 Par Value (File No. 7-5987)

American Medical Holdings, Inc.

Common Stock, \$.01 Par Value (File No. 7-5988)

OEA, Inc.

Common Stock, \$.10 Par Value (File No. 7-5989)

Viacom, Inc.

Non-Voting Common Stock, \$.01 Par Value (File No. 7-5990)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 90-13994 Filed 6-15-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 12, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Salomon, Inc. Put Warrants on FT-SE (File No. 7-5977)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

⁶ Delta has represented to the Commission that Delta's systems have the capacity to absorb the anticipated increase in volume of trading that may result from its proposals. See letter from David Malloy, President, Delta, to Ross Pazzol, Attorney, Division of Market Regulation, Commission, dated May 18, 1990.

⁷ See Delta Rule 101.

⁸ *Id.*

⁹ See 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13995 Filed 6-15-90; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Philadelphia Stock Exchange,
Inc.**

June 12, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bass PLC

American Depositary Shares (File No. 7-5991)

URS Corporation

Common Stock, \$.01 Par Value (File No. 7-5992)

Baldwin Technology Company, Inc.

Class A Common Stock, \$.01 Par Value (File No. 7-5993)

Bell Industries, Inc.

Common Stock, \$.25 Par Value (File No. 7-5994)

Chambers Development Company, Inc.

Class A Common Stock, \$.50 Par Value (File No. 7-5995)

Chemed Corporation

Capital Stock, \$1 Par Value (File No. 7-5996)

Hunt Manufacturing Company

Common Stock, \$.10 Par Value (File No. 7-5997)

Precision Castparts Corporation

Common Stock, No Par Value (File No. 7-5998)

TNP Enterprises, Inc.

Common Stock, No Par Value (File No. 7-5999)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are

consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13996 Filed 6-15-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17527; 812-7470]

**National Tax Credit Investors II and
National Partnership Investments
Corp.; Application**

June 8, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: National Tax Credit Investors II, a California limited partnership (the "Partnership"), and its general partner, National Partnership Investments Corp., a California corporation (the "General Partner"). The Partnership and the General Partner collectively are referred to as the "Applicants."

RELEVANT 1940 ACT SECTIONS:

Exemption under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Partnership to invest primarily in other limited partnerships that will construct, develop, rehabilitate, own and operate multifamily housing complexes qualifying for low-income housing federal income tax credits.

FILING DATE: The application was filed on January 31, 1990, and amended on May 22, 1990 and June 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1990, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 9090 Wilshire Boulevard, Second Floor, Beverly Hills, CA 90211.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

APPLICANTS' REPRESENTATIONS:

1. Applicants represent that the Partnership was organized under the California Revised Limited Partnership Act as a vehicle for equity investment in apartment complexes (the "Apartment Complexes") qualifying for: (a) Low-income housing tax credits under the Internal Revenue Code of 1986, as amended (the "Code"), or, to a limited extent, for historic rehabilitation tax credits under the Code ("Tax Credits"), and (b) assistance under other governmental programs promoting low-income or moderate-income housing.

2. The Partnership will operate as a "two-tier" partnership by investing primarily as a limited partner in other partnerships (the "Local Partnerships") that will construct, develop, rehabilitate, own and operate Apartment Complexes.¹ Local Partnerships will be primarily limited partnerships, but also may be general partnerships or joint ventures. However, the Partnership will invest no more than 10% of its funds in general partnerships or joint ventures. The Partnership's investment objectives are to: (a) Provide Qualified Investors (defined herein) current tax benefits in the form of Tax Credits to offset their federal income tax liability, (b) preserve and protect the Partnership's capital, (c) provide the potential for participation in any appreciation in the Apartment Complexes' value, (d) provide a potential for distributions upon the Apartment Complexes' refinancing or disposition, and (e) provide passive

¹ The Partnership may invest in Apartment Complexes that have commercial, retail or office space, but only if such space: (a) Is merely an ancillary feature of the Apartment Complex's overall development structure, (b) does not represent the primary tax or economic motivation underlying the Partnership's investment in the Apartment Complex, and (c) does not generate in excess of 20% of the Apartment Complex's anticipated total gross rental income.

losses that Limited Partners may use to offset income from passive activities.

3. The Partnership normally will acquire at least a 90% interest in the Local Partnerships' profits, losses and Tax Credits, as well as a specified interest in the cash distributions, with the balance remaining with the local general partners. If the Partnership invests in any Local Partnership in which it acquires less than 50% of the limited partnership interests, the local partnership agreements will provide that the Partnership will have at least a 50% vote to: (a) Amend the local partnership agreement, (b) dissolve the Local Partnership, (c) remove the local general partner and elect a replacement, and (d) approve or disapprove the sale of substantially all of the assets of such Local Partnership. In addition, the Partnership will require that the local partnership agreements provide to the limited partners of the Local Partnerships substantially all of the rights required by section VII of the Guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. The Partnership filed a registration statement under the Securities Act of 1933 for the sale of units ("Units") of limited partnership interests ("Limited Partnership Interests") at \$1,000 per Unit. The minimum subscription that the Partnership will accept is five Units (\$5,000). If the prescribed minimum number of Units (10,000) have not been sold on or before October 20, 1990 (180 days from the date of the final Prospectus), no Units will be sold, and the funds submitted by subscribers will be returned promptly together with a pro rata share of any interest earned. The Partnership will not admit any subscribers as limited partners (the "Limited Partners") to the Partnership until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. Purchasers of the Units will become Limited Partners of the Partnership. The Partnership Agreement imposes certain restrictions on transfer and assignment of the Limited Partnership Interests, including that each proposed assignee must deliver to the General Partner evidence of his suitability. The Partnership will not redeem or repurchase Units, does not anticipate formation of a public market for the Units and, thus, believes purchases of Units should be considered illiquid investments.

5. Subscriptions for Units must be approved by the General Partner and PaineWebber Incorporated (the "Selling

Agent"). Each subscriber must represent that he is a qualified investor ("Qualified Investor") that meets the following general investor suitability standards. In the case of a corporate investor that is closely held but is not a personal service corporation, a corporation subject to subchapter S of the Code, and a C corporation that is not closely held and is not a personal service corporation, such a corporation reasonably expects for most of the next ten years to have sufficient active business income against which the Tax Credits can be utilized. In the case of a noncorporate investor, such an investor: (a) Reasonably expects to have an annual adjusted gross income of \$200,000 or less or to have substantial unsheltered passive activity income for 1990 and each of at least the next ten years in which the Tax Credits are expected to be available, and (b) either (i) has a net worth (exclusive of home, furnishings, and automobiles) of at least \$30,000 and an annual gross income of not less than \$30,000, (ii) has a net worth (exclusive of home, furnishings, and personal automobiles) of at least \$75,000, or (iii) is purchasing in a fiduciary capacity for a person meeting the requirements set forth in clause (i) or (ii). Certain states may impose additional or alternative standards, but in no event shall the Partnership employ any suitability standard less restrictive than that set forth above.

6. Although the General Partner will control the Partnership, it cannot take certain significant actions without the express consent of a majority in interest of the Limited Partners. These actions include: (a) The sale at any one time of all or substantially all of the assets of the Partnership, except for (i) liquidating sale of a final Local Partnership Interest remaining after the sale of all other Local Partnerships Interests, or (ii) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution, (b) dissolution of the Partnership, and (c) the admission of a successor or additional general partner. Also, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, remove any general partner and elect a replacement. In addition, each Limited Partner is entitled to review the Partnership and the Local Partnerships' books and records.

7. PaineWebber TC Partners, L.P., an Affiliate (as defined in the Partnership Agreement) of the Selling Agent, will serve as the Partnership's special limited partner (the "Special Limited Partner"). The Special Limited Partner

and the General Partner will each have the right to appoint three of the six members of the Partnership's investment committee, which must approve certain of the Partnership's investment decisions. The Special Limited Partner also will have the right to remove, and appoint a substitute for, the General Partner under certain limited circumstances. The Special Limited Partner will provide consulting services to the General Partner for the administration of the Partnership's affairs.

8. The General Partner and its Affiliates will receive from the Partnership organizational and offering expenses and an allowance for wholesaling expenses. The Selling Agent will receive customary commissions, an investment banking fee on the sale of Units, and a marketing fee. The Selling Agent may authorize other members of the National Association of Securities Dealers, Inc. ("NASD") to sell Units, and may reallow them commissions. These selling commissions and fees are customarily charged in securities offerings of this type and are consistent with the rules of fair practice that the NASD has adopted. The NASAA Guidelines limit the acquisition phase fees payable to all persons for the acquisition of Local Partnerships Interests. The Partnership may pay additional fees or compensation to the General Partner, the Special Limited Partner, or their Affiliates, and they may receive amounts from Local Partnerships to the extent permitted by applicable law and regulations. All such fees and amounts shall be subject to the terms of the Partnership Agreement. The General Partner also will be allocated generally 1% of the cash flow and 1% of the Tax Credits that the Partnership receives. In addition, the Partnership will compensate the local general partners of each Local Partnership, as specified in the Partnership Agreement and the Partnership's Prospectus.

9. All proceeds of the public offering of Units will initially be placed in an escrow account with United States Trust Co. of New York (the "Escrow Agent"). Pending release of the proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in interest bearing accounts that will be limited to: (a) An interest-bearing account with the Escrow Agent or in a fully segregated and fully insured money-market account with the Escrow Agent, (b) short-term certificates of deposit issued by a United States bank having a net worth of at least \$50 million, and (c) short-term securities issued or guaranteed by the United States government. Upon receipt

of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Partnership or Apartment Complexes.

10. Any net proceeds that the Partnership does not immediately utilize to acquire Local Partnership Interests or for the other Partnership purposes (such as the establishment of a reserve) may be invested in permitted interim investments. These interim investments include: (a) Readily marketable securities, issued by states or municipalities within the United States, rated in the highest rating category by a nationally recognized statistical rating organization ("NRSRO"), (b) direct obligations of, or obligations unconditionally guaranteed by, the United States government, (c) commercial paper issued by any corporation organized and doing business under the laws of the United States or any state thereof rated in the highest category by a NRSRO, (d) certificates of deposit or Eurodollar certificates of deposit issued by any bank whose deposits are federally insured and that has a combined capital and surplus of not less than \$100 million (or, in the case of Eurodollar certificates of deposit, a branch of any such bank), (e) collateralized repurchase agreements with domestic banks whose deposits are federally insured and that have a combined capital and surplus of not less than \$100 million having a duration no longer than 60 days with respect to or secured by any of the types of securities specified in clauses (a) through (c) above, and (f) shares of any open-end investment company, as defined in the 1940 Act, that has assets of not less than \$200 million and invests primarily in securities of the type enumerated in clauses (a) through (e) above or banker's acceptances; provided, however, that if the value of "investment securities" (as defined in the 1940 Act and which terms shall not include the value of the Local Partnership interests) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities, as defined in the 1940 Act, and cash items) at any time, such excess may be invested only in government securities.

Applicant's Legal Conclusions

1. Applicants represent that the Partnership's application for an exemption from all provisions of the 1940 Act is both necessary and appropriate in the public interest because: (a) Investment in low-income and moderate-income housing in accordance with national policy is not economically suitable for private

investors without the tax and organizational advantages of the limited partnership form, (b) the limited partnership form insulates each Limited Partner from personal liability, limits his financial risk to his investment, and allows him to claim his proportionate share of the Tax Credits, income, and losses from the investment, and (c) the limited partnership form of organization is incompatible with the 1940 Act's fundamental provisions.

2. Investment Company Act Release No. 8456 (Aug. 9, 1974) lists two conditions, designed for the protection of investors, that must be satisfied in order to qualify for the type of exemptive relief that the Partnership seeks: (a) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-sheltered, investments would not be unsuitable * * *," and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." Applicants represent that the Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection. The Units only will be sold to, and transfers only will be permitted to, investors who meet specified suitability standards. The Limited Partners are adequately protected through disclosure in the Partnership's Prospectus of all potential conflicts with the General Partners, the Special Limited Partner, and their Affiliates. The Partnership will file with the SEC and distribute to investors certain financial documents and reports on its activities.

3. In addition, the General Partner and its Affiliates agree in the Partnership Agreement that each General Partner and its Affiliates (excepting such Affiliates that are publicly or privately syndicated limited partnerships) will not undertake an equity investment that could be suitable for the Partnership unless: (a) The Partnership does not have funds available to consummate the transaction on a timely basis, or (b) the Partnership has declined to enter into such investment (with Affiliates that are publicly or privately syndicated limited partnerships being able to undertake such an investment only under certain circumstances that have been limited to protect the interests of the Limited Partners). The Partnership also will not acquire Apartment Complexes from a prior partnership affiliated with the General Partner. Applicants furthermore believe that the Limited Partners are protected by the Partnership

Agreement's provisions that are designed to prevent overreaching and to assure fair dealing by the General Partner.

4. The substantial fees and other forms of compensation that the Partnership will be pay to the General Partner, the Special Limited Partner, and their Affiliates will not have been negotiated through arm's-length negotiations. Applicants represent, however, that the terms of all such compensation will be fair and no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, all compensation to be paid to the General Partner and its Affiliates is specified in the Partnership Agreement and the Partnership's Prospectus and no compensation will be payable to the General Partner or any of its Affiliates if not so specified. Moreover, Applicants represent that this compensation meets: (a) All applicable guidelines of the various states in which the Units will be offered and sold, and (b) with the statement of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships.

5. Applicants further represent that the Partnership's contemplated arrangement is not susceptible to the abuses the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Partnership by various federal, state and local agencies, provide protection to investors that Applicants believe are comparable to the protections that the 1940 Act provides. Therefore, Applicants believe that an exemption under section 6(c) as requested herein would be entirely consistent with the purposes and policies of the 1940 Act.

6. Applicants acknowledge that the order requested from the SEC applies in a prospective manner only, and they will not rely on such order with respect to any activities, investments or commitments by them prior to the date of the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 14012 Filed 6-15-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26101; Summary Notice No. PE-89-48]

Summary of Petition for Exemption Received From America West Airlines

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for exemption.

SUMMARY: Pursuant to the FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of a petition by America West Airlines for an extension of an exemption from the Federal Aviation Regulations (FAR) in order to operate four flights at Washington National Airport above the hourly limits for scheduled air carriers specified in the High Density Rule. The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments received on this petition must identify the petition docket number involved and be received on or before July 9, 1990.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-10], Docket No. 26101, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket [AGC-10], Room 915, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

On June 4, 1990, America West Airlines, Inc., petitioned for an extension of Exemption No. 5133, which authorized American West Airlines to operate four flights at National Airport, as previously authorized for Braniff Airlines by exemption.

Specifically, petition seeks relief from FAR § 93.123(a). The exemption would allow petitioner to continue using the four special exemption slots at Washington National Airport as authorized by Exemption No. 5133 issued January 12, 1990, beyond the current expiration date of July 15, 1990.

Issued in Washington, DC on June 13, 1990.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement.

[FR Doc. 90-14051 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Determination of ship values for war risk insurance, effective January 1, 1990.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The

valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR part 308. In accordance with Public Law 99-59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of January 1, 1990, by inserting in the space provided therefore, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period January 1, 1990 to June 30, 1990 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 App. U.S.C. 1209(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: June 13, 1990.

Joel C. Richard,
Assistant Secretary.

Federal Register List of Ship Valuations

Binder	Official	Vessel Name	Valuation
3721	680897	1st Lt. Alex Bonnyman	(1)
3686	668348	Adabelle Lykes	\$5,780,000.00
3344	533270	Admiralty Bay	8,550,000.00
3537	513704	Alison C.	1,800,000.00
3511	3046	Alpha Sea	6,500,000.00
2764	523846	America Sun	8,550,000.00
3360	577343	American Heritage	4,500,000.00
3648	612715	American Resolute	12,740,000.00
3642	517617	American Trojan	2,380,000.00
3495	614544	Arco Alaska	27,000,000.00
3048	548424	Arco Anchorage	15,300,000.00
3518	623291	Arco California	27,000,000.00
3194	559400	Arco Fairbanks	15,300,000.00
3604	586633	Arco Independence	39,000,000.00
3142	556666	Arco Juneau	15,300,000.00
2900	536496	Arco Prudhoe Bay	8,000,000.00
2948	539313	Arco Sag River	8,000,000.00
3605	580245	Arco Spirit	39,000,000.00

Binder	Official	Vessel Name	Valuation
3591	549197	Arco Texas	12,000,000.00
3469	601377	Argonaut	12,740,000.00
1718	292191	Ashley Lykes	2,160,000.00
3385	586128	Atigun Pass	22,200,000.00
3608	646348	Atlanta Bay	5,500,000.00
3337	530141	Austral Rainbow	6,000,000.00
3510	3234	Baltimore Sea	7,040,000.00
3464	600128	Bay Ridge	27,000,000.00
3357	572359	Beaver State	4,500,000.00
3315	582451	Biehl Trader	4,400,000.00
3316	584827	Biehl Traveler	4,400,000.00
3628	633428	Blue Ridge	27,600,000.00
3408	586130	Brooks Range	22,200,000.00
3623	543461	CG-461	12,000.00
3624	543481	CG-481	12,000.00
3685	668349	Charlotte Lykes	5,780,000.00
3215	562418	Chelsea	3,000,000.00
3144	557503	Cherry Valley	3,000,000.00
3724	689194	Chesapeake Bay	28,000,000.00
3266	577738	Chestnut Hill	4,500,000.00
3394	588320	Chevron Arizona	8,200,000.00
2985	541563	Chevron California	8,000,000.00
3308	577358	Chevron Colorado	8,200,000.00
3372	584608	Chevron Louisiana	8,200,000.00
2992	542850	Chevron Mississippi	8,000,000.00
3309	566080	Chevron Oregon	8,200,000.00
3310	570709	Chevron Washington	8,200,000.00
3626	638709	Coast Range	27,600,000.00
3590	280243	Coho	3,000,000.00
3654	648470	Columbia Bay	5,500,000.00
3528	590414	Cornucopia	20,000,000.00
3749	578746	Courier	7,200,000.00
3704	279938	Cove Leader	4,500,000.00
3702	644295	Cove Liberty	4,500,000.00
370	279438	Cove Trader	3,400,000.00
3722	671968	CPL Louis J. Hauge	(1)
3725	689193	Delaware Bay	28,000,000.00
2806	528567	Edgar M. Quenny	4,000,000.00
2096	500702	Elizabeth Lykes	1,885,000.00
3658	657540	Energy Independence	44,850,000.00
2980	541414	Export Freedom	6,370,000.00
3065	548442	Export Patriot	6,370,000.00
2593	282272	Exxon Baltimore	3,400,000.00
3056	524619	Exxon Baton Rouge	7,805,000.00
3683	658495	Exxon Baytown	74,350,000.00
3465	600478	Exxon Benicia	24,000,000.00
2595	263784	Exxon Boston	3,400,000.00
3668	658493	Exxon Charleston	65,000,000.00
3412	588443	Exxon Galveston	2,500,000.00
2603	275519	Exxon Jamestown	3,150,000.00
3723	692967	Exxon Long Beach	92,000,000.00
2606	298216	Exxon New Orleans	6,000,000.00
3460	600477	Exxon North Slope	24,000,000.00
3057	526792	Exxon Philadelphia	7,805,000.00
3717	647470	Exxon Princeton	34,000,000.00
3058	523626	Exxon San Francisco	7,805,000.00
3716	692968	Exxon Valdez	92,000,000.00
2609	273896	Exxon Washington	3,150,000.00
3673	658494	Exxon Wilmington	65,660,000.00
3718	656742	Exxon Yorktown	34,000,000.00
3709	536850	Falcon Countess	5,000,000.00
3710	533611	Falcon Duchess	5,000,000.00
3713	538811	Falcon Princess	5,000,000.00
3609	640014	Florida Bay	9,590,000.00
3540	514966	Freeport I	5,000,000.00
3541	516720	Freeport II	5,000,000.00
3538	292748	Gale B	1,610,000.00
2421	513140	Genevieve Lykes	1,885,000.00
3610	643069	Georgia Bay	8,255,000.00
3346	526588	Glacier Bay	8,550,000.00
3729	561433	Golden Endeavor	4,500,000.00
2791	526972	Golden Gate	6,785,000.00
3512	566090	Golden Monarch	4,500,000.00
3739	650771	Great Lakes	7,050,000.00
3783	907989	Green Bay	16,585,000.00
3784	561453	Green Harbour	9,000,000.00
3780	562594	Green Island	9,000,000.00
3737	907990	Green Lake	19,000,000.00
3790	934702	Green Ridge	7,550,000.00
3777	559623	Green Valley	9,000,000.00
3788	677648	Green Wave	7,550,000.00
3745	684689	Gus W. Darnell	(1)

Binder	Official	Vessel Name	Valuation
387	280564	James Lykes	2,100,000.00
1304	287103	Joan Lykes	2,100,000.00
3366	500799	Joe Sevier	340,000.00
389	282772	John Lykes	2,100,000.00
390	281326	Joseph Lykes	2,100,000.00
3491	621042	Kaul	40,400,000.00
3456	586127	Kenai	19,500,000.00
3398	586129	Keystone Canyon	22,200,000.00
598	266730	Keystoner	1,600,000.00
3287	579572	Kittanning	4,500,000.00
3746	684692	Lawrence H. Gianella	(1)
3622	550598	LB-726	12,000.00
3623	550599	LB-727	12,000.00
1352	287416	Leslie Lykes	2,100,000.00
2403	512187	Leitia Lykes	1,885,000.00
3345	535357	Liberty Sun	8,550,000.00
3311	582506	LNG Aquarius	81,000,000.00
3371	588005	LNG Aries	81,000,000.00
3407	588006	LNG Capricorn	81,000,000.00
3429	595752	LNG Geminil	81,000,000.00
3454	595753	LNG Leo	81,000,000.00
3463	595756	LNG Libra	81,000,000.00
3467	595754	LNG Taurus	81,000,000.00
3475	595755	LNG Virgo	81,000,000.00
2062	299938	Louise Lykes	1,885,000.00
3546	632749	Lyra	10,725,000.00
3730	2774	M. P. Grace	4,000,000.00
3701	655330	Maj Stephen W. Pless	(1)
2763	524219	Manukai	12,750,000.00
2803	528400	Manulani	12,750,000.00
3492	618705	Maol	687,500.00
3687	668347	Margaret Lykes	5,780,000.00
2814	529399	Marine Chemist	4,500,000.00
2777	245851	Marine Duval	2,595,000.00
2133	246836	Marine Floridian	2,595,000.00
1513	289873	Marjorie Lykes	2,160,000.00
3639	299786	Martha B	2,550,000.00
3415	591709	Maul	32,825,000.00
3740	650770	Michigan	4,895,000.00
3152	542026	Mobil Arctic	15,300,000.00
2442	286479	Mobil Meridian	3,400,000.00
3301	578288	Mormacsky	3,145,000.00
3302	569257	Mormacstar	3,145,000.00
3303	573770	Mormacsun	3,145,000.00
1243	286650	Nancy Lykes	2,100,000.00
3656	628783	New York Sun	20,000,000.00
3802	8093	Ocean Challenger	29,000,000.00
3801	8042	Ocean Conqueror	29,000,000.00
3804	8197	Ocean Explorer	48,335,000.00
3805	8259	Ocean Navigator	48,335,000.00
3803	8157	Ocean Victor	29,000,000.00
3508	5886	Ocean Voyager	11,500,000.00
2745	523341	OMI Champion	7,000,000.00
3470	522864	OMI Charger	7,000,000.00
3576	638899	OMI Dynachem	33,600,000.00
3577	642151	OMI Hudson	33,600,000.00
3471	520839	OMI Leader	7,000,000.00
2614	520728	OMI Wabash	7,000,000.00
2591	518738	OMI Willamette	7,000,000.00
2827	529795	Overseas Alaska	6,785,000.00
3672	514928	Overseas Alice	6,455,000.00
2862	530877	Overseas Arctic	6,785,000.00
3535	630050	Overseas Boston	18,500,000.00
3378	583412	Overseas Chicago	13,500,000.00
3409	590624	Overseas Harriette	5,800,000.00
3533	553137	Overseas Juneau	15,300,000.00
3406	590623	Overseas Marilyn	5,800,000.00
3386	588001	Overseas New York	13,500,000.00
3383	586647	Overseas Ohio	13,500,000.00
3671	517186	Overseas Valdez	6,455,000.00
3480	518125	Overseas Vivian	6,455,000.00
3399	588955	Overseas Washington	13,500,000.00
3747	571049	Patriot	7,200,000.00
3742	684688	Paul Buck	(1)
3700	641084	Pfc Eugene A. Obregon	(1)
3719	679513	Pfc James Anderson, Jr	(1)
3741	674269	Pfc William B. Baugh	(1)
3655	638073	Philadelphia Sun	20,000,000.00
3690	673003	President Eisenhower	25,000,000.00
3689	674310	President F.D. Roosevelt	25,000,000.00
3483	530138	President Grant	12,000,000.00
3726	530139	President Harrison	12,000,000.00

Binder	Official	Vessel Name	Valuation
3485	530137	President Hoover	12,000,000.00
3030	544900	President Jefferson	6,000,000.00
3121	552109	President Johnson	6,000,000.00
3041	546725	President Madison	6,000,000.00
3678	655397	President Monroe	27,000,000.00
3120	552108	President Pierce	6,000,000.00
2398	511653	President Taft	3,100,000.00
3484	530140	President Tyler	12,000,000.00
3679	653424	President Washington	27,000,000.00
3705	634621	Pride of Texas	10,780,000.00
3396	570108	Prince William Sound	17,000,000.00
3720	684591	Pvt Harry Fisher	(1)
3748	573810	Ranger	7,200,000.00
3743	684691	Richard G. Mathiesen	(1)
3807	644241	Richmond Bay	5,500,000.00
3147	557033	Robert E. Lee	9,000,000.00
3750	577241	Rover	7,200,000.00
3779	519102	Rover	8,000,000.00
2162	502928	Ruth Lykes	1,885,000.00
3179	559035	Sam Houston	9,000,000.00
3744	684690	Samuel L. Cobb	(1)
2918	535020	Sansinena II	8,000,000.00
3423	504015	Santa Adela	1,885,000.00
2752	502726	Santa Juana	1,885,000.00
3731	1876	Sasstown	1,850,000.00
3734	3459	Savannah Sea	7,040,000.00
3776	569153	Sea Cat	155,000.00
3786	588561	Sea Horse	155,000.00
3781	557400	Sea Lion	155,000.00
3792	530856	Sea Mule	155,000.00
3778	555604	Sea Ox	155,000.00
3785	565697	Sea Tiger	155,000.00
3453	594073	Sea-Land Adventure	8,000,000.00
3100	552818	Sea-Land Consumer	10,000,000.00
3488	604248	Sea-Land Defender	20,500,000.00
3513	604247	Sea-Land Developer	20,500,000.00
3534	606062	Sea-Land Endurance	20,500,000.00
3489	604248	Sea-Land Explorer	20,500,000.00
3514	604249	Sea-Land Express	20,500,000.00
3527	606065	Sea-Land Freedom	20,500,000.00
3516	606061	Sea-Land Independence	20,500,000.00
3529	606064	Sea-Land Innovator	20,500,000.00
3451	594374	Sea-Land Leader	8,000,000.00
3487	604245	Sea-Land Liberator	20,500,000.00
3526	606066	Sea-Land Mariner	20,500,000.00
3450	593980	Sea-Land Pacer	8,000,000.00
3486	604244	Sea-Land Patriot	20,500,000.00
3452	594375	Sea-Land Pioneer	8,000,000.00
3131	552819	Sea-Land Producer	10,000,000.00
3517	606063	Sea-Land Voyager	20,500,000.00
3699	641083	Sgt. Matej Kocak	(1)
3688	668350	Sheldon Lykes	5,780,000.00
3627	641804	Sierra Madre	27,600,000.00
3611	645759	South Carolina Bay	9,400,000.00
3707	653210	Spirit of Texas	10,780,000.00
3706	642834	Star of Texas	10,780,000.00
3148	557034	Stonewall Jackson	9,000,000.00
233	277623	Syosset	2,605,000.00
3606	640635	Tallahassee Bay	5,500,000.00
3507	3460	Texas Cty Sea	7,040,000.00
2927	283897	Texas Sun	3,400,000.00
3536	516158	Theresa F.	1,800,000.00
405	283413	Thompson Lykes	2,100,000.00
3431	586131	Thompson Pass	22,200,000.00
3732	1778	Timbo	1,850,000.00
3391	585629	Tonsina	19,500,000.00

Binder	Official	Vessel Name	Valuation
3657	275583	Tropic Sun	2,740,000.00
3727	550200	Ultramar	7,000,000.00
3728	555146	Ultrasea	7,000,000.00
2270	505786	Valley Forge	6,175,000.00
3652	642492	Virginia Bay	9,590,000.00
3361	551001	WA-1-0001	12,000.00
3362	567451	WA-2-0451	15,000.00
3621	608713	WA-3-0576	22,500.00
3622	608714	WA-3-0577	25,000.00
3735	3233	Yorktown Sea	7,040,000.00
411	282126	Zoella Lykes	2,100,000.00

¹ "Casualty" value as defined and determined by each individual MSC charter agreement.

[FR Doc. 90-14027 Filed 6-13-90; 2:02 pm]

BILLING CODE 4910-S1-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 3:08 p.m. on Tuesday, June 12, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,566

Silverado Banking, Savings and Loan Association, Denver, Colorado

Case No. 47,577

First American Bank of Lake Worth, National Association, Lake Worth, Florida

Recommendations involving the Corporation's assistance agreements with certain insured banks.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and

that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 13, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-14089 Filed 6-14-90; 8:54 am]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting.

TIME AND DATE: A meeting of the Board of Directors will be held on June 25, 1990. The meeting will commence at 9:00 a.m.

PLACE: Hyatt Regency Washington, 400 New Jersey Ave. NW, Yorktown Room, Washington, DC 20001, (202) 737-1234.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR 1622.5 (a), (c), (d), (e), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.

2. Approval of Minutes.

—May 21, 1990

3. Chairman's Remarks and Report.

- (a) Status Report on Presidential Search Committee, and Review of Recommended Candidates for President.
- (b) Selection of Interim President.
- (c) Resolution of H. Dana as to Next President.

4. President's Report.

- 5. Resolution of P. Pullen as to Legal Services Reform(s).
- 6. Further Consideration of LSC Access to Employment Verification and Accounting (EVA) Files Maintained by Grantees; and Such Action as Is Appropriate.
- 7. Further Consideration of Implementation of Declination Reporting Requirements; and Such Action as Is Appropriate.
- 8. Testimony of California Rural Legal Assistance as to Proposed Reduction in Funding; and Such Action as Is Appropriate.
- 9. Staff Report on LSC Grantees' Representation of Drug Dealers and Residents of Drug-dealing Households; and Such Action as Is Appropriate.
- 10. Consideration of Increase in Compensation of LSC Board Members; and Such Action as Is Appropriate.

CONTACT PERSON FOR MORE

INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: June 14, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-14205 Filed 6-14-90; 4:20 pm]

BILLING CODE 7050-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Meeting of the Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, June 26, 1990.

PLACE: Federal Reserve System, Marriner S. Eccles Federal Reserve Building, C Street Entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

CONTACT PERSON FOR MORE

INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary, 376-2400.

AGENDA: Personnel Matters.

Carol J. McCabe,

General Counsel/Secretary.

[FR Doc. 90-14143 Filed 6-14-90; 12:41 pm]

BILLING CODE 7570-00-M

Corrections

Federal Register

Vol. 55, No. 18

Monday, June 18, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3700]

Preparation, Adoption, and Submittal of State Implementation Plans; Methods for Measurement of PM Emissions From Stationary Sources

Correction

In rule document 90-7603 beginning on page 14246 in the issue of Tuesday, April 17, 1990, make the following corrections:

Appendix M to Part 51—[Corrected]

1. On page 14252, in section 5.7.5.3, the equation was incorrect and should read as follows:

$$\sigma = \left[\frac{(E_1^2 + E_2^2 + E_3^2) - (E_1 + E_2 + E_3)^2}{3} \right]^{1/2}$$

2. On page 14253, in section 5.8.1.1, in the third column, the first equation was incorrect and should read as follows:

$$Re = \frac{4\rho Q_{cyc}}{d_{cyc}\pi\mu_{ave}}$$

3. On page 14254, in the first column, the paragraph designated 6.6 should appear immediately after the first equation, and before the paragraph designated 6.6.1. As corrected, the text appearing on page 14254 should read as follows:

The flow rate, at actual cyclone conditions, is calculated as follows:

$$Q_a = \frac{T_a}{K_1 P_a} \left[Q_{std} + \frac{V_{w(std)}}{\Theta} \right]$$

6.6 Aerodynamic Cut Size. Use the following procedure to determine the aerodynamic cut size (D_{50}).

6.6.1 Determine the water fraction of the mixed gas through the cyclone by using the equation below.

$$B_c = \frac{V_{w(std)}}{Q_{std}\Theta + V_{w(std)}}$$

6.6.2 Calculate the cyclone gas viscosity as follows:

$$\mu_{cre} = C_1 + C_2 T_g + C_3 T_g^2 + C_4 f_{02} - C_5 B_c$$

6.6.3 Calculate the molecular weight on a wet basis of the cyclone gas as follows:

$$M_c = M_d(1 - B_c) + 18.0(B_c)$$

6.6.4 If the cyclone meets the design specification in Figure 12 of this method, calculate the actual D_{50} of the cyclone for the run as follows:

$$D_{50} = \beta_1 \left[\frac{T_g}{M_c P_g} \right]^{0.2091} \left[\frac{\mu_{cre}}{Q_g} \right]^{0.7091}$$

where $\beta_1 = 0.1562$.

6.6.5 If the cyclone does not meet the design specifications in Figure 12 of this method, then use the following equation to calculate D_{50} .

$$D_{50} = (3)(10)^b (7.376 \times 10^{-9})^m \left[\frac{M_c P_g}{T_g} \right] \left[\frac{4 Q_g}{\pi \mu_{cre}} \right] d^{(1.5-m)}$$

where:

m = Slope of the calibration curve obtained in Section 5.8.2.

b = y-intercept of the calibration curve obtained in Section 5.8.2.

6.7 Acceptable Results. Acceptability of anisokinetic variation is the same as Method 5, Section 6.12.

6.7.1 If $9.0 \mu m < D_{50} < 11 \mu m$ and $90 < I < 110$, the results are acceptable. If D_{50} is greater than $11 \mu m$, the Administrator may accept the results. If D_{50} is less than $9.0 \mu m$, reject the results and repeat the test.

4. On page 14260, under "Figure 6. Example EGR setup sheet", in the second column, in the sixth line, " $\Delta H\theta$, in. H_2O " should read " $\Delta H\theta$, in. H_2O ".

5. On the same page, the three column equation preceding "Desired meter" should read as follows:

$$K = 846.72 D_n^4 \Delta H\theta C_p^2 (1 - B_{wa})^2 \frac{M_d (t_m + 460) P_g}{M_w (t_w + 460) P_{bar}} = \text{_____}$$

6. On page 14261, the line appearing in the first column, that reads "Figure 8. Example worksheet 2, total LFE pressure head." should appear in the second column, immediately preceding the line which reads "Barometric pressure, P_{bar} , in. Hg=_____". As corrected, the portion of text beginning with the line which reads "Constants" in the third column and ending with the line which reads "Barometric pressure, P_{bar} , in. Hg=_____ in the second column, should read as follows:

Constants:

$$K_1 = 1.5752 \times 10^{-5} \frac{\mu_{LFE} T_m P_g^{0.7091} \mu_d}{P_{LFE} M_d^{0.2949} T_g^{0.7091}} = \text{_____}$$

$$K_2 = 0.1539 \frac{\mu_{LFE} T_m D_n^2 C_p}{P_{LFE}} \left[\frac{P_g}{T_g} \right]^{1/2} = \text{_____}$$

$$K_3 = \frac{B_{wa} \mu_d [1 - 0.2949 (1 - 18/M_d)] + 74.143 B_{wa} (1 - B_{wa})}{\mu_d - 74.143 B_{wa}} = \text{_____}$$

$$A_1 = \frac{K_1}{X_1} - \frac{\mu_{LFE} Y_1}{180.1 X_1} = \text{_____}$$

$$B_1 = \frac{K_2 K_3}{(M_w)^{1/2} X_1} = \text{_____}$$

Total LFE pressure head:

$$\Delta p_1 = A_1 - B_1 (\Delta p)^{1/2} = \text{_____ in. } H_2O$$

Figure 8. Example worksheet 2, total LFE pressure head.

Barometric pressure, P_{bar} , in. Hg=_____

7. On the same page, in the middle column, the third equation from the bottom of the page, should read as follows:

$$K_2 = 0.1539 \frac{M_{LFE} T_m D_n^2 C_p}{P_{LFE}} \left[\frac{P_s}{T_s} \right]^{1/2}$$

8. On the same page, in the first column, the last equation should read as follows:

$$A_2 = \frac{K_1}{X_r} - \frac{\mu_{LFE} Y_r}{180.1 X_r} = \text{---}$$

9. On the same page, in the second column, the last equation, should read as follows:

$$B_2 = \frac{K_1 K_2}{X_r} = \text{---}$$

10. On page 14266, in Table 1, in the first table-column, the second entry should read "2. Cyclone cut size (D_{50})."

11. On page 14270, in the third column, under the paragraph designated 5.3.1.1, the second equation should read as follows:

$$(\text{Stk}_{50})^{1/2} = \left[\frac{4 Q_{cyc} (D_{50})^2}{9 \pi \mu_{cyc}^2 (d_{cyc})^2} \right]^{1/2}$$

12. On page 14276, after "Maximum and minimum velocities:" the two equations should read as follows:

$$v_{min} = v_n \left[0.2457 + \left[0.3072 - \frac{0.2603 Q_s^{1/2} \mu_s}{v_n^{1.5}} \right]^{1/2} \right] = \text{--- ft/sec}$$

$$v_{max} = v_n \left[0.4457 + \left[0.5690 - \frac{0.2603 Q_s^{1/2} \mu_s}{v_n^{1.5}} \right]^{1/2} \right] = \text{--- ft/sec}$$

13. On page 14277, after the first table and the line that reads "Velocity traverse data:" the equation should read as follows:

$$\Delta p(\text{Method 201A}) = \Delta p(\text{Method 2}) \left[\frac{C_p}{C_p'} \right]^2$$

14. On the same page, in the first column, after the line that reads "Number of traverse points = ---", the equation should read as follows:

$$t_1 = \left[\frac{\Delta p'_1}{\Delta p'_{avg}} \right]^{1/2} \frac{(\text{Total run time})}{(\text{Number of points})}$$

The first part of the paper is devoted to a discussion of the general principles of the method of moments. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The second part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a normal distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The third part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a binomial distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The fourth part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a Poisson distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The fifth part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a gamma distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The sixth part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a beta distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The seventh part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a chi-square distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The eighth part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of a t-distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

The ninth part of the paper is devoted to a discussion of the application of the method of moments to the estimation of the parameters of an F-distribution. It is shown that the method of moments is a special case of the method of maximum likelihood. The method of moments is simpler and more direct than the method of maximum likelihood, but it is less powerful. The method of maximum likelihood is more powerful, but it is more complicated and more difficult to apply.

Federal Register

Monday
June 18, 1990

Part II

Environmental Protection Agency

40 CFR Part 280

Underground Storage Tanks Containing
Petroleum; Financial Responsibility
Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-3679-1]

RIN 2050-AC67

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, or the Agency) today proposes financial responsibility requirements applicable to local governmental owners and operators of underground storage tanks containing petroleum. EPA proposes these requirements under the authority of section 9003 (c) and (d) of the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). This proposal would establish four alternative mechanisms for use by local governments to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental underground storage tank releases. The Agency is proposing to add these local governmental financial assurance mechanisms to the existing mechanisms contained in the financial responsibility rule promulgated October 26, 1988. By providing additional mechanisms, this proposal will allow a greater number of local governmental entities to comply with the financial assurance requirements and will result in a net cost savings to local governments estimated at approximately \$288 million over a ten year period.

DATES: The Agency will consider all comments received by August 17, 1990 before taking final action on the proposed rule.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST-3), Office of Underground Storage Tanks (WH-562A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments received by EPA, and all references used in this document, may be inspected in the public docket, located in room 2427 (Mall), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9 a.m. to 4

p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Authority
- II. Background
 - A. Legislative and Regulatory Overview
 - 1. RCRA Subtitle I
 - 2. October 26, 1988 Rule
 - 3. Discussion of the Financial Responsibility Requirements for Governments in the October 26, 1988 Rule
 - B. Key Provisions in Today's Proposal
 - C. Rationale for Agency's Approach
 - D. Description of the Regulated Community
- III. Section-by-Section Analysis
 - A. Applicability
 - B. Definition of Terms
 - 1. Bond Ratings
 - 2. Investment Grade Bonds
 - 3. General Obligation Bonds
 - 4. Substantial Governmental Relationship
 - C. Amount and Scope
- IV. New Mechanisms for Demonstrating Financial Responsibility
 - A. Description of Proposed Mechanisms
 - 1. Bond Rating Test
 - 2. Worksheet Test
 - 3. Governmental Guarantee
 - 4. Maintenance of a Fund Balance
 - 5. Combinations of Mechanisms
 - B. Mechanisms Considered But Not Proposed
 - 1. Multiple Criteria Test
 - 2. Credit Card Approach
 - 3. Intergovernmental Risk Pooling
 - 4. General and Total Fund Balance Options
 - 5. Optional, Performance-based Guarantee for Cleanup Requirements
 - C. Reporting by Owner or Operator
 - D. Recordkeeping
 - E. Bankruptcy or Other Incapacity of the Owner or Operator
- V. Economic Impact Analysis
 - A. Economic Impact Analysis
 - 1. Compliance with E.O. 12291
 - 2. The Affected Community
 - 3. Assumptions and Methodology Used in the EIA
 - 4. Cost Impacts
 - 5. Environmental Impacts
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
- VI. Supporting Documents

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended. The principal amendments to this Act have been under the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-

499) (42 U.S.C. 6921, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

II. Background

This section provides the legislative and regulatory background for this proposed rule and summarizes today's proposed additional mechanisms for financial responsibility for local government entities.

A. Legislative and Regulatory Overview

This section discusses the statutory authority for financial responsibility regulations for UST owners and operators, the provisions of the financial responsibility regulations promulgated on October 26, 1988, and the scope of the financial responsibility regulations being proposed today.

1. RCRA Subtitle I

The Hazardous and Solid Waste Amendments of 1984 (HSWA) extended and strengthened the provisions of the Resource Conservation and Recovery Act (RCRA). HSWA added subtitle I to RCRA, establishing provisions for the development and implementation of a regulatory program for underground storage tanks (USTs) containing certain substances, including petroleum and other regulated substances (such non-petroleum regulated substances are hereinafter referred to as "hazardous substances"). Section 9003(a) of subtitle I requires the EPA Administrator to promulgate requirements for release detection, prevention, and correction as necessary to protect human health and the environment. These technical standards were promulgated at 53 FR 37082 (September 23, 1988).

The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended sections 9003(c) and (d) of subtitle I to mandate that the Agency establish financial responsibility requirements for UST owners and operators to assure the costs of corrective action and third-party liability caused by sudden and nonsudden accidental releases from USTs. SARA also modified Subtitle I by specifying the minimum statutory levels of financial responsibility for petroleum marketers and the factors that EPA may consider in setting minimum levels for non-marketers. The objective of the financial responsibility requirements is to ensure that owners and operators can respond promptly to clean up releases and to compensate third parties for any injuries or damages associated with UST releases.

2. October 26, 1988 Rule

The final financial responsibility rule, promulgated on October 26, 1988, applies to owners or operators of "petroleum UST systems" with the following exceptions:

(1) Federal or State entities that own or operate USTs containing petroleum; and

(2) Owners and operators of tank systems excluded from the technical standards.

To cover the potential costs of corrective action and third-party liability claims from sudden and nonsudden accidental releases from USTs, the rule requires the following parties to obtain financial assurance of at least \$1 million per occurrence:

(1) All owners or operators of petroleum USTs at facilities engaged in petroleum production, refining, or marketing; and

(2) Owners or operators of USTs with an average monthly throughput of more than 10,000 gallons.

Owners or operators of USTs at facilities not engaged in petroleum production, refining, or marketing with an average monthly throughput of 10,000 gallons or less must maintain financial assurance of at least \$500,000 per occurrence. All owners or operators must maintain an annual aggregate of \$1 million or \$2 million, depending on the number of USTs assured.

UST owners or operators may use the following mechanisms to satisfy the requirements: Insurance or risk retention group coverage, surety bond, guarantee, letter of credit, financial test of self-insurance, trust fund, a State-required mechanism, or a State fund or other State assurance. (Under the promulgated rules, only private companies reporting to credit reporting agencies, publicly-held companies reporting to the Securities and Exchange Commission, and public utilities reporting to specified agencies are eligible to use the financial test of self-insurance.) Mechanisms can be used alone or in combination to cover the costs of taking corrective action and compensating third parties as long as a mechanism or a combination of mechanisms provides the full amount of required assurance. The only combination of mechanisms that is not allowed is the financial test of self-insurance and a guarantee where the financial statements of the owner or operator and the guarantor are consolidated.

The October 26, 1988 final rule requires owners or operators to submit documentation of financial responsibility to the implementing agency after a known or suspected

release occurs; when a provider becomes incapable of providing assurance; and when a provider revokes a mechanism and the owner or operator is unable to obtain alternate coverage. Owners or operators must also submit documentation of financial responsibility if requested by the implementing agency. In addition, UST owners or operators must notify the implementing agency of their methods of demonstrating financial responsibility upon installation of new tanks. Owners or operators must also maintain records of the financial assurance mechanisms used to satisfy these requirements on-site or at their place of business.

The October 26, 1988 rule also contains provisions that require third-party providers of financial assurance (i.e., sureties, insurance companies, risk retention groups, guarantors, and providers of letters of credit) to provide notice of cancellation with an adequate time period for the UST owners and operators to seek alternative coverage and to determine whether there has been a release that would trigger the third-party mechanism. On November 9, 1989, EPA published an interim final rule that modified the required language of endorsements required for insurance policies as they relate to cancellation (54 FR 47077).

Under the October 1988 rule, owners and operators must comply with these financial responsibility requirements over a phased-in compliance period lasting up to 24 months from the promulgation date (i.e., before October 26, 1990). On March 14, 1990, EPA announced its intention to extend the final compliance date 12 additional months. EPA is in the process of proposing and promulgating an amended rule implementing the announced extension.

The State program approval objective for financial responsibility of owners and operators of petroleum UST systems was also promulgated October 26, 1988. This objective outlines two general provisions: (1) The considerations used to determine whether States' financial responsibility requirements will be considered "no less stringent" than the corresponding Federal requirements standard, and (2) the standards that must be met to demonstrate adequate enforcement of compliance.

3. Discussion of the Financial Responsibility Requirements for Governments in the October 26, 1988 Rule

Although the final financial responsibility rule (53 FR 43322, October 26, 1988) exempts those government entities whose debts and liabilities are

the debts and liabilities of Federal or State governments, local government entities are required to provide financial assurance for USTs that they own or operate. Under the Agency's intended revised schedule for phased compliance with the final rule, local government entities would be given 36 months from the promulgation date (or until October 26, 1991) to comply. In the October 1988 final rule, the Agency stated its intention to develop a financial test for self-insurance in the interim that would allow local governments to demonstrate if they have the requisite financial strength and stability to pay the costs associated with UST releases. After passing this financial self-test, local government entities will be allowed to self-insure in a manner similar to private companies that meet the criteria of the corporate financial test. The Agency anticipated that the financial test for local government entities would be promulgated before their scheduled compliance date.

Under the intended revised compliance schedule, Indian tribes also would be required to comply with financial responsibility requirements within 36 months of the promulgation date of the final rule (i.e., before October 26, 1991). In the October 1988 rule, the Agency indicated that it would request comments on whether a financial test for local government entities should apply to Indian tribes at the time the financial test is proposed. The Agency hereby solicits public comment on the appropriateness of the proposed mechanisms for use by Indian tribes.

B. Key Provisions in Today's Proposal

In today's proposal, the Agency is proposing additional mechanisms that will allow local governments to comply with the financial responsibility requirements. These mechanisms do not replace the existing methods; rather, they supplement them. These mechanisms are similar in intent to the corporate guarantee and the financial test of self-insurance now allowed as mechanisms for corporations. Local governments eligible to use the mechanisms being proposed today may use them alone or in combination with other mechanisms, as described below.

EPA is proposing four additional mechanisms for use by local government entities to demonstrate financial responsibility:

(1) *Bond rating test.* Local government entities with \$1 million or more of total outstanding issues of general obligation bonds (excluding refunded obligations) and having investment grade ratings would be eligible for self-insurance.

Bonds with investment grade ratings are defined as those having a Moody's bond rating of Baa or higher (i.e., Aaa, Aa or A), or a Standard and Poor's bond rating of BBB or higher (i.e., AAA, AA, or A). Passing the bond rating test will be considered a sufficient demonstration of financial responsibility.

(2) *Worksheet test.* A worksheet test has been developed for use by local government entities that do not have general obligation bond ratings or have less than \$1 million in outstanding issues of investment-grade-rated general obligation bonds. Local governmental entities having outstanding issues of general obligation bonds that are rated as less than investment grade are not eligible to use the worksheet test. Any eligible local government entity that passes the worksheet test can self-insure. The worksheet incorporates several financial criteria designed to measure a local government entity's financial stability. Passing the worksheet test will be a sufficient demonstration of financial responsibility.

(3) *Guarantee.* A local government entity or other jurisdiction can demonstrate financial responsibility by obtaining a binding guarantee from another governmental entity eligible for self-insurance. The guarantor must have the authority to provide a guarantee to the local government entity seeking financial assurance. For example, a town may serve as the guarantor for a special district, a county may serve as the guarantor for a school district, or a State may serve as the guarantor for a county. A guarantee for the entire aggregate limit for which a local government must demonstrate financial responsibility will be a sufficient demonstration of financial responsibility. A guarantee for a lesser amount may be used in combination with one or more other allowable mechanisms to demonstrate financial responsibility.

(4) *Maintenance of a funded balance.* Local government entities may satisfy the financial responsibility regulations by developing a self-administered emergency response fund to finance an UST corrective action and pay for third-party damages. A fund balance established for the entire aggregate limit for which a local government must demonstrate financial responsibility will be a sufficient demonstration of financial responsibility. A fund balance established for a lesser amount may be used in combination with one or more other allowable mechanisms to demonstrate financial responsibility.

The October 1988 rule allows the use of combinations of financial

responsibility mechanisms. This feature is extended to include the financial self-test mechanisms being proposed today. For example, a local government entity may use the bond rating, worksheet, guarantee, or funded balance mechanisms to satisfy the deductible amounts of insurance policies. Local governmental entities may use the mechanisms being proposed today in addition to the mechanisms allowed by the October 1988 rule: Risk retention group (RRG) coverage, surety bond, letter of credit, State-required mechanisms, or a State fund or other State assumption of responsibility.

In contrast to the specifications for the corporate self-test, OUST does not believe that the local governments will use consolidated financial statements to support both the worksheet and the guarantee mechanisms. Local governments are separate legal and financial entities from States and from each other. The situation wherein a local government will consolidate its financial statements with a State, or vice versa, and use the consolidated statements to support both the worksheet and the guarantee, cannot occur. All local governments are independently chartered. Either they have a charter (issued by the State or by a local government with the authority to do so), or they do not operate independently. By the nature of the local government charters, local government operations that are consolidated, such as utility operations accounted for as enterprise funds, never issue stand-alone financial statements, because they have no independent standing. Thus, there is no potential that the consolidated entities could first use their own financial statements for the worksheet, and then rely on the consolidated financial statements for a guarantee, because they have no independent financial statements. Independent authorities (e.g., independent school districts) are independent because they have separate charters and articles of incorporation; they operate independently and their financial statements are never consolidated with the statements of the nearby general purpose governments.

To support the proposed rule, the Agency has prepared a Background Document, "Background Document in Support of Proposed Financial Self-Test for Local Governments Subject to the Financial Responsibility Requirements of Subtitle I of the Resource Conservation and Recovery Act," that describes in detail the methodology and analyses used to evaluate potential financial responsibility mechanisms.

C. Rationale for Agency's Approach

The Agency had four main goals in developing the additional alternatives being proposed today for local governments to demonstrate financial responsibility under subtitle I. First, the Agency wanted to recognize fundamental differences between governmental entities and private entities. Second, the Agency wanted to keep the rule as flexible as possible to allow local governments a variety of choices in demonstrating financial responsibility. Thus, the Agency is proposing several financial assurance mechanisms for local governments. Third, the Agency wanted to keep the mechanisms as simple as possible so as to reduce the administrative burden on local governments as well as the implementing agency. Thus, the Agency is proposing options that use data believed to be readily available to local governmental entities or that are consistent with governmental practices and is maintaining the same approach to reporting requirements adopted in the regulations published in the October 1988 rule. Fourth, the Agency wanted financial responsibility mechanisms that could realistically be used by local governments.

In the October 1988 rule, the Agency provided a mechanism whereby financially secure corporations could self-insure. The rule provided two alternatives for corporations. Under Alternative I, a firm could self-insure if it met four criteria: (1) Tangible net worth equal to 10 times the sum of its financial responsibility amounts for underground storage tanks, its closure, post-closure care, liability coverage, and/or corrective action costs for Subtitle C facilities, and its plugging and abandonment costs for Class I Hazardous Waste Injection Wells, (2) tangible net worth equal to at least \$10 million, (3) annual filing of its financial statements with the Securities and Exchange Commission (SEC), the Rural Electrification Administration (REA), the Energy Information Administration (EIA), or Dun & Bradstreet (which must have assigned a financial strength rating of 4A or 5A), and (4) annual reports which, if independently audited, did not include an adverse auditor's opinion or a disclaimer of opinion. Under Alternative II, a corporation can self-insure if it meets four criteria: (1) Tangible net worth of at least \$10 million, (2) tangible net worth at least six times its UST obligation, (3) U.S. assets equal to at least 90 percent of total assets, or at least six times their UST obligations, and (4) net working

capital equal to at least six times the required amount of UST aggregate coverage, or a current Standard and Poor's bond rating of AAA, AA, A, or BBB, or a current Moody's bond rating of Aaa, Aa, A, or Baa. In addition, a firm using Alternative II must either report its financial information to the SEC, the EIA, or the REA or obtain a special auditor's report.

Local government entities, however, differ in several important characteristics from corporations, which makes the application of the corporate self-test mechanism in the October 1988 rule impractical for local governments. For example, "general purpose" local governments (counties, municipalities, and townships) generally use accounting systems that do not recognize assets in a manner similar to private companies. For example, municipal buildings and infrastructure (e.g., streets and utility lines) are not generally carried as assets on the local government financial statements. Thus, a test based on "tangible net worth" is, by definition, unworkable for many local governments. (It should be noted, however, that government-owned utilities that provide financial data to the Rural Electrification Administration or the Energy Information Administration are allowed to use the corporate financial test under the October 1988 rule.) Also, the accounting standards used by most local governmental entities are not the same as the Generally Accepted Accounting Principles ("GAAP") used by private entities. Most local governments use either cash basis accounting (often mandated by State law) or "modified" accrual accounting, where the recognition of revenues may be delayed. Consequently, a test based on "net working capital" may be unworkable for most local governmental entities. In addition, local governments are not generally required to report financial information to a common regulatory agency similar to the Securities and Exchange Commission. Thus, it is impossible to incorporate mandatory reporting to an independent organization into a self-test.

Nevertheless, the Agency believes that a self-insurance mechanism may be particularly appropriate for local government entities. The Agency has determined that local government entities are, in general, more financially stable than private companies. Most local governments, unlike private entities, have the authority to levy taxes, which provides a consistent, reliable source of income. In contrast to corporations, they are not subject to

takeovers and mergers, which means that they are not subject to abrupt changes in financial structure. They are, by definition, geographically fixed, eliminating potential concerns that they may move and abandon their USTs. They rarely go bankrupt, suggesting that they are, as a class, more financially stable. The available literature suggests that even bankruptcy does not allow local government entities to void their legal obligations. Additionally, unlike private companies, local governments are generally required to make their financial data publicly available.

These factors suggest that a self-insurance test for municipalities does not necessarily require the same level of built-in safeguards as required of private entities. Assurance that local government owners and operators will be financially responsible for their UST-related obligations, therefore, can be demonstrated more easily than assurance for private entities. Consequently, the primary concern of the Agency in developing this rule is that local governments show evidence of financial stability and prudent financial management.

D. Description of the Regulated Community

This section describes the nature of the local governmental entities that would be regulated under today's proposed rule, including a description of their UST ownership characteristics, a brief description of their operation, and an overview of the considerations the Agency has used in developing today's proposal.

The Agency estimates that about 62,000 petroleum USTs that are subject to subtitle I jurisdiction are owned or operated by approximately 29,000 local government entities. Most of these USTs store petroleum products for purposes other than retail motor fuel sales. A local government entity may, for example, own USTs that store gasoline to fill police and fire vehicle tanks.

Local government entities include both general purpose local governments and special purpose local government entities. General purpose local government entities include municipalities, counties, townships, towns, villages, parishes, and New England towns. Special purpose local governments include entities that perform a single function or a limited range of functions. Special purpose local governments are generally designated as either public authorities or special districts such as school districts, water and sewer authorities, transit authorities, or power authorities. All local governments, both general and

special purpose, are subject to this proposed rule and are eligible to use the new financial assurance mechanisms described in today's proposal.

The Agency's research has shown an extremely low rate of fiscal emergencies among governmental entities through the 1970's and 1980's. A 1983 study by the Advisory Council on Intergovernmental Relations (ACIR) found only three incidents of bankruptcy among general purpose governments, only one of which caused a general purpose governmental body to void a legally binding agreement. In all other cases, even local government entities that entered bankruptcy were forced to make full restitution, although sometimes over a stretched out payment term. Since 1983, only three additional general purpose governments are known to have declared bankruptcy. There has been a similarly low rate of bankruptcy among special purpose districts. Between 1972 and 1989, 29 utility special districts, two school districts, and six other special purpose districts and hospitals filed for bankruptcy (out of a total of more than 40,000 school districts and special purpose districts). Although bankruptcy is an extreme condition, the Agency believes this very low incidence (0.003 percent per year) reflects general stability of local government entities. In contrast, 56,423 (1.3 percent) of the 4,256,243 private companies in operation filed bankruptcy petitions in 1982.¹ This number increased to 88,278 in 1987. Combined with the relatively low costs of UST financial responsibility obligations (relative to other environmental obligations and most governmental activities in general), the relative stability of local governments is interpreted by EPA to indicate a general ability to meet financial obligations under subtitle I.

The Agency's research has shown relatively few cases where releases were known to have come from local government-owned USTs. These data suggest that the local government entities were able to clean up and to pay for the costs of corrective actions associated with the release. Because of the limited data regarding local government responses to UST releases, however, the Agency has relied primarily on data and analyses regarding the overall financial health of local governments. The Agency solicits comments on the extent to which local

¹ Statistical Abstract of the United States, 109th Edition. United States Department of Commerce, Washington D.C., 1989; and General Report on Industrial Organization, 1982 Enterprise Statistics. Issued October 1986.

government entities have incurred UST releases and the means by which responses were made.

III. Section-by-Section Analysis

A. Applicability

Today's proposed rule would apply to all non-exempt governmental owners and operators of underground storage tanks containing petroleum. 40 CFR § 280.90(c) exempted from financial responsibility requirements State and Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States. Although the October 1988 rule excluded State and Federal governments, it required local government entities to demonstrate financial assurance for USTs that are owned or operated by the government.

Data available to the Agency in preparing the Regulatory Impact Analysis for the October 1988 rule suggests that approximately 29,000 local government entities collectively own approximately 62,000 USTs. Additional analysis of the New York State tank notification data base suggests that larger local government entities are more likely to own USTs and are more likely to own multiple USTs, but a specific breakdown of how many of each type of local government own USTs is not available from the data available to EPA.

Local government entities are created under State law, and consequently vary significantly from State to State. All local government entities recognized under State law may seek to use the financial assurance mechanisms proposed today. As recognized by the Bureau of the Census, local government entities generally fall into the following categories:

County Governments: Organized county governments are found throughout the nation except for Connecticut, Rhode Island, the District of Columbia, and limited portions of other States. In Louisiana, the county governments are officially designated as "parish" governments, and the "borough" governments of Alaska resemble county governments in other States. In general, county governments are defined in terms of a geographical area served, rather than a specific population.

Municipal Governments: Municipal governments include active government units officially designated as cities, boroughs (except in Alaska), towns (except in the six New England States and Minnesota, New York, and Wisconsin), and villages. This concept corresponds to the "incorporated

places" that are recognized in Census Bureau reporting of population and housing statistics. Municipal governments are typically organized to serve specific population concentrations, rather than specific geographic areas.

Township Governments: As distinguished from municipal governments, which are created to serve specific population concentrations, township governments exist to serve inhabitants of areas without regard to population concentrations. This category includes governments officially designated as "towns" in the six New England States, New York, and Wisconsin, some "plantations" in Maine, and "locations" in New Hampshire, as well as governments called townships in other areas. In Minnesota, the terms "town" and "township" are used interchangeably.

School Districts Governments: Forty-five States have established public school systems with sufficient autonomy and fiscal authority that they can be classified as independent local government entities.

Special Purpose Districts: Special purpose districts are governmental entities created to perform a single or limited range of functions (e. g., park and recreation districts, libraries, fire protection districts, cemeteries, etc.). These districts may be subdivided into any of the following distinct categories: (1) Local or metropolitan districts; (2) districts dependent or independent on a municipality for their creation or operation; and (3) districts created by State enactment or by municipal resolution. They have sufficient administrative and fiscal autonomy to qualify as separate governments.

Indian Tribes: Indian Tribes are included in the statutory definition of local government entities in RCRA Section 1004(13) and are therefore required to comply with the financial responsibility requirements starting with the same compliance date as other local government entities. This proposal treats Indian Lands as local government entities and allows them to use the self-test mechanisms proposed to demonstrate financial responsibility.

B. Definition of Terms

1. Bond Ratings

A bond rating is an "evaluation of the credit quality of notes and bonds usually made by independent rating services. * * * Ratings generally measure the probability of the timely repayment of principal and interest of

municipal bonds." ² In this proposed rule, only ratings made by Moody's Investors Service and Standard & Poor's will be considered eligible for use in demonstrating financial responsibility.

2. Investment Grade Bonds

As defined by the Comptroller of the Currency, investment grade bonds are generally regarded as eligible for bank investment. In addition, the legal investment laws of various States may impose certain ratings or other standards for obligations eligible for investment by savings banks, trust companies, and fiduciaries generally. For purposes of this rule, investment grade bonds are considered to include bonds rated Aaa, Aa, A, and Baa by Moody's, or AAA, AA, A, and BBB by Standard and Poor's.³

3. General Obligation Bonds

General obligation (G.O.) bonds, also known as "full faith and credit" bonds, are secured by their issuers' ability to levy ad valorem taxes or to draw from other unrestricted revenue sources, such as sales or income taxes. These bonds are important mechanisms for financing municipal capital improvements such as schools, streets, and municipal buildings. The bond issuer's ability to generate revenues is evaluated by analyzing factors in four categories: Socioeconomic, finance, debt, and administration.⁴

4. Substantial Governmental Relationship

The October 26, 1988 rule authorized owners and operators to obtain a corporate guarantee to meet their financial responsibility requirements. The corporate guarantor must (a) have a controlling interest in the owner or operator or in a specified related firm or (b) issue the guarantee as an act incident to a "substantial business relationship" with the owner or operator (§ 280.96). The object of the corporate guarantee is a valid and enforceable contract. Additionally, to insure that State insurance laws will not impair the

² Moody's Investors Service, Inc., "Moody's on Municipals: An Introduction to Issuing Debt," 1989, p. 75.

³ Both Standard and Poor's and Moody's recognize groupings within the major bond rating classes. Moody's signifies higher ranking bonds within a class with a "1" (e.g., Baa1), while Standard and Poor's uses a +/- system to designate higher and lower ranking bonds. This proposed rule does not consider these groupings. Thus, a Baa1 rating is classified as a Baa rating for the purposes of the test, while an AA+ or AA- rating is classified as an AA rating.

⁴ Standard & Poor's Corporation, *Standard & Poor's Debt Ratings Criteria: Municipal Overview*, 1988.

enforceability or validity of the mechanism, a corporate guarantee may be used only if it is certified for use by the Attorney General of the State in which the USTs are located.

Local governments, however, do not have "controlling interests" in one another, and their interactions may not be of an economic nature constituting a "substantial business relationship." As with the corporate guarantee, the Agency is concerned that local governmental guarantees are valid and enforceable, and that they do not conflict with State insurance laws. Thus, a municipality using a local governmental guarantee must certify that there is a "substantial governmental relationship" underlying the guarantee. Such a relationship must include a clear commonality of interests, such as common constituencies served, overlapping geographical jurisdiction, or mutual impact in the event of an UST release. In addition, local governments acting as a guarantor must have the authority to enter into such agreements.

Examples of governmental guarantees could include (1) a guarantee offered by a county to an incorporated city located partially or entirely within the limits of the county, (2) a guarantee offered by a general purpose local government to an independent school district or special district serving the guarantor in whole or in part, (3) a guarantee offered by a county to another if both counties cover a common aquifer subject to contamination by UST releases, or (4) a guarantee offered by the State to a local government within the State.

C. Amount and Scope

The amount and scope of financial responsibility is not being changed from the requirements established in the October 1988 rule. Governmental entities owning or operating USTs at facilities with a monthly throughput of less than 10,000 gallons must demonstrate financial responsibility in the amount of \$500,000 per occurrence. Governmental owners and operators owning or operating one or more USTs at facilities with a monthly throughput of 10,000 gallons or more must demonstrate financial responsibility in the amount of \$1 million. In addition, owners and operators of USTs must demonstrate financial responsibility in the amount of an appropriate annual aggregate. Owners and operators of 100 or fewer USTs must demonstrate financial responsibility in the annual aggregate amount of \$1 million, and owners and operators of more than 100 USTs must demonstrate financial responsibility in the annual aggregate amount of \$2 million.

IV. New Mechanisms for Demonstrating Financial Responsibility

A. Description of Proposed Mechanisms

Today's rule proposes four additional financial assurance mechanisms for use by local government entities that own or operate USTs containing petroleum: a bond rating test, a worksheet test, a governmental guarantee, and maintenance of a funded balance. These mechanisms are described below. In addition to today's proposed mechanisms, local governmental owners and operators may use any of the financial responsibility mechanisms authorized under 40 CFR 280.94 (i.e., insurance, Risk Retention Group (RRG) coverage, surety bonds, letters of credit, fully-funded trust funds, State-required mechanisms, a State fund, or other State assumption of responsibility). The Background Document prepared in conjunction with the rule explains in more detail the data and methodology used to develop these proposed mechanisms.

1. Bond Rating Test

In order to pass the bond rating test, local government entities must have outstanding issues of general obligation bonds that are currently rated at least "investment grade" by Moody's or Standard & Poor's. The municipality's total outstanding obligation must be \$1 million or more, excluding refunded obligations. Investment grade bonds are those with a current Standard and Poor's bond rating of AAA, AA, A, or BBB, or a current Moody's bond rating of Aaa, Aa, A, or Baa. If a local government has multiple outstanding issues of general obligation bonds with different ratings, or if the ratings assigned to a single class or issue of general obligation bonds by different ratings agencies differ, the lowest rating must satisfy the criterion of the test.

The Agency is aware that municipal bonds are often insured by third-party insurance companies, and that the rating assigned to such insured bonds is established primarily by the creditworthiness of the insurer. After examining the criteria used by the rating companies to evaluate bond insurance companies, however, the Agency has concluded that the provisions for ongoing review and intervention granted the bond insurance companies under the insurance agreements provides a level of third-party oversight comparable to that provided directly by the bond rating companies. For purposes of this rule, therefore, the Agency is not distinguishing between uninsured and insured bonds.

If a local government can successfully meet the requirements of the bond rating test proposed today, the governmental entity is not required to procure insurance or use any other financial responsibility mechanism. Instead, the investment grade bond rating of a total outstanding obligation of \$1 million or more will demonstrate that a local government entity owning or operating USTs possesses adequate resources and financial stability to meet its corrective action and third-party obligations in the event of a UST release. Localities with investment grade bond ratings have been reviewed by independent bond rating agencies and determined to have several favorable financial and economic characteristics. The characteristics coincide closely with the financial characteristics necessary to adequately respond to a UST release. As described below, the Agency believes that the evaluation process resulting in an investment grade bond assures that local governmental entities with investment grade general obligation bonds of \$1 million or more are healthy and will have the ability to meet the costs of a UST release.

The Agency has selected the existence of investment grade bond ratings on general obligation debt as an option for demonstrating financial responsibility for several reasons. First, EPA took into consideration the use of bond ratings as a standard measure of risk by banks and other fiduciary entities. As a result of a 1938 agreement issued jointly by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Executive Committee of the National Association of Supervisors of State Banks, these agencies have given municipal bonds in the first four rating categories (Aaa through Baa or AAA through BBB) privileged status as investment securities. Banks are permitted to hold only a certain number of low or unrated bonds, and they must balance such holdings with higher rated or more credit-worthy securities. Second, bond ratings serve as one of the only independent evaluations of local government entities' financial health. To perform their evaluations, the bond rating companies must consider a variety of factors that affect both local government entities' current ability to pay and the likelihood of continued ability to pay in the future. In particular, the costs of environmental obligations are included in the evaluations. Thus, the costs of underground storage tanks, solid waste landfills, hazardous waste landfills, sewage treatment plants, and

associated environmental liabilities are factored into the rating analysis.⁵ Third, general obligation bonds are secured by the full faith and credit of the borrower, up to a legal compulsion to levy taxes or make legislative appropriations. Because the UST financial responsibility obligations will constitute similarly enforceable obligations, the Agency considers this underlying security comparable to the legal obligations under subtitle I. Fourth, bonds are rated on a periodic basis. Local governments are required to provide current financial data annually; failure to do so can result in removal of the bond rating. Also, the rating agencies receive local newspapers from around the country to monitor local conditions.⁶

Although a bond rating applies only to the specific debt issue or class of issue rated, the ratings criteria consider the local government entities' condition as a whole. Both Moody's and Standard and Poor's review economic, debt, financial performance, and governmental factors in establishing a rating. "Ideally, the analyst looks for a municipality or an enterprise to be in a position to exert maximum control over its ability to repay its debts and to demonstrate a clear willingness to honor its commitments. The local economy should be strong and prospering. There should be no constraints on revenue-raising abilities; in fact there should be a great deal of discretion in determining service levels. A proven track record of careful management should exist which has provided for the build-up of financial reserves to address unforeseen contingencies."⁷

The Agency is also requiring that the total outstanding general obligation debt of a municipality using the bond rating test equal \$1 million or more. The Agency is proposing this threshold to ensure that the financial evaluation of a municipality by a bond rating agency was based upon the municipality's ability to incur debt comparable to a large UST release. Based on the Agency's research, most municipalities with investment grade general obligation bonds have total outstanding debt exceeding \$1 million and would, therefore, be eligible to use the bond rating test. The Agency examined the size of new issues of all debt during a six month period in 1988 and 1989, and the total debt of local governments in a

selected number of states. Based on this analysis, the Agency believes 80 to 90 percent is a reasonable estimate of the fraction of local governments with more than \$1 million in general obligation debt.⁸ In addition, the size of new debt issues strongly suggests that as old debt is retired and new debt is issued, the absolute number and the percentage of local governments with more than \$1 million in general obligation bonds will increase.

Because of the general stability of local government entities, their inability to move, their freedom from takeovers and mergers, their role as a governmental body serving the public interest, and their consistent history of meeting obligations, the Agency considers local government entities to be sufficiently different from private companies that an investment grade bond rating of \$1 million or more in general obligation debt can be a sufficient indication of financial responsibility to meet the financial assurance requirements of subtitle I. It should be noted that the issuance of general obligation debt presupposes an ability to levy additional taxes or otherwise raise revenues as necessary to meet debt payments; such options are not available to corporations.

The Agency is proposing to allow the use of insured issues of general obligation bonds. Information from bond rating companies indicates that local governments do not purchase insurance as a means of earning an investment grade rating, but rather to increase the rating from a lower investment grade (e.g., Baa, Baal, or A) to the very highest (Aaa). In exchange for the cost of the insurance, the local governments obtain a lower interest rate for the life of the bond. Analysis undertaken by Moody's of four major bond insurers shows that virtually all of the insured debt would have earned an investment grade rating without the insurance, and so would qualify under the bond rating test.⁹ Bond insurers, unlike bond rating agencies, have a strong financial interest in the soundness of the local governments. If a local government defaults on a payment, the bond insurers must meet the payment. Consequently, bond insurers track the financial obligations of insured local governments closely and often have covenants that allow them to

intervene in local government operations. Although the bond rating of insured bonds does not directly indicate a local government financial condition, it does demonstrate both that the government has assured the insurance company of its ability to meet its debts, and that a third-party has a strong confidence in the financial health of the local government.

As a self-test mechanism, bond ratings are easily obtainable information, and will impose minimal administrative burden in determining a local government entity's eligibility. Many local government entities, however, do not currently have general obligation bond ratings. As of July, 1989 Moody's has ratings for a total of 11,225 general obligation bonds issued by local government entities, virtually all of which are "investment grade." Of these, 4,738 were issued by cities and counties, with the rest issued by school districts and special purpose districts.¹⁰ (Because some local government entities may have multiple issues of general obligation bonds, the number of local governments with rated bonds may be lower.) Although Standard & Poor's rates additional entities, there is a substantial overlap—one study found that 94 percent of cities of 2,500 or more residents with a rating from Standard & Poor's also had a rating from Moody's.¹¹ In contrast, there are more than 80,000 local government entities in the United States, of which an estimated 29,000 own USTs. To provide local governments with as many compliance choices as possible to meet the requirement, the Agency is also proposing additional self-test mechanisms to demonstrate financial responsibility.

EPA requests comment on the appropriateness of using the bond rating test as an allowable mechanism for self-assurance for local governmental entities in general, and for non-general purpose local governmental entities in particular. The Agency also requests comments on whether earning an investment grade on outstanding issues of \$1 million or more of general obligation bonds should provide prima facie evidence of financial responsibility.

⁵ Linda Reidt Critchfield, EPA, memorandum to the record, "Conversation with Al Mediolli, Moody's Investor Services on August 29, 1989," September 15, 1989.

⁶ Ibid.

⁷ Moody's Investors Service, Inc., "Moody's on Municipalities: An Introduction to Issuing Debt," 1989, p. 28.

⁸ Barnicle, Dickson, and Bansal. ICF Inc. memorandum to Stephanie Bergman, EPA, October 1989.

⁹ Memorandum from Kate Donaldson, James Dickson, and Tony Bansal to Stephanie Bergman, "Municipal Bond Insurance," May 31, 1989; memorandum from Kate Donaldson, James Dickson, and Tony Bansal to Stephanie Bergman, "Municipal Bond Insurance Companies," June 22, 1989.

¹⁰ Brenda Ramos, Moody's Investors Service, Public Finance Department, letter to Linda Critchfield, EPA, July 12, 1989.

¹¹ Cluff, George S., and Farnham, Paul G., "Standard & Poor's vs. Moody's: Which City Characteristics Influence Bond Ratings?", *Quarterly Review of Economics and Business*, Board of Trustees of the University of Illinois, Volume 24, No. 3, 1984.

2. Worksheet Test

For those local governments without a bond rating, or with less than \$1 million obligations in outstanding investment grade bonds, the Agency has designed a worksheet test based on easily available information that measures financial strength. Local government entities with general obligation bonds rated lower than investment grade, however, may not use the worksheet test.

The Agency believes that it would be inappropriate to allow local governments with below-investment-grade debt to self-insure. Whereas the proposed worksheet test is based on a thorough evaluation of important financial factors, the bond rating process is able to consider additional factors (e.g., political and demographic considerations) that provide more qualitative information than the attributes included in a self-administered worksheet test. The Agency believes that those local governments that have received below-investment-grade bond ratings have failed a detailed examination conducted by independent, third-party experts and have been found to be significantly less likely than other similar types of localities to meet their obligations. In the light of such known weaknesses, the Agency believes that if a local government has received a bond rating of less than investment grade, it should not be able to use the worksheet test being proposed.

The Agency also believes that local governments without outstanding issues of general obligation bonds, or with less than \$1 million in outstanding issues of investment-grade-rated general obligation bonds, should be allowed to use a worksheet test. The Agency's belief is based on the fact that many small governments that do not have a bond rating, or those with less than \$1 million of outstanding debt, have good fiscal management practices, sound infrastructures, and stable populations, and do not need to raise large amounts of capital through the bond market. The absence of a bond rating, or the issuance of investment-grade-rated general obligation bonds in aggregate amounts of less than \$1 million, for such local governments, should not be interpreted as an indication of financial weakness. It is merely an indicator of their capital structures, which happen not to rely on large amounts of long-term debt. Unless these local governments are demonstrated to be financially weak, on the basis of a worksheet test, it would be inappropriate to deny them the option of self-insuring.

The Agency recognizes, however, that there are variations among local governments, as among the members of any group. In developing the worksheet, the Agency's first step was to capture this variation using an index of financial strength. The index assigns a rank to each of the general purpose governments in the 1982 Census. After arraying the governments according to their rank on the index, the test establishes a cut-off point that, in the Agency's opinion, excludes that bottom fraction of local governmental entities that might not be able to meet their financial obligations in the event of a UST release. The procedures used to develop the index and establish the threshold cut-off are discussed in subsequent sections.

The test has been designed to isolate the fraction of governmental entities that are in poor financial condition from those other governments that, in general, have sufficient resources and flexibility to respond to a UST release. Consequently, the Agency is not establishing the worksheet test proposed today as a precedent for other Agency regulations affecting local governments, because other regulations may require either larger required levels of funds or more certain cash flows.

Features of the Worksheet Test

The worksheet test proposed today has the following features:

- An eligible governmental entity will use its financial data to calculate nine financial ratios, using a worksheet provided in today's rule. The nine ratios are:

- Debt service to total revenue,
- Total funds to total expenses,
- Total revenues to total expenses,
- Debt service to population,
- Revenue to population,
- Expenses to population,
- Total funds to total revenues,
- Total funds to population, and
- Local revenues to current expenditures.

- Using the worksheet, each of the nine ratios is compared to the national distribution of that ratio to calculate a score, which is a measure of how far above or below the national average the municipality's ratio lies. The comparison is accomplished for each ratio by subtracting the mean value of the ratio (based on all general purpose local governments in the 1982 Census of Governments) and dividing by the standard deviation of the ratio.

- Using the worksheet, the individual scores for the nine variables are weighted and added to calculate a total score, or index.

- Governments with a total score that passes the specified threshold may use the test as a mechanism for demonstrating financial responsibility for UST corrective action and third-party liability claims. To simplify the use of the worksheet test, the threshold value has been incorporated into the calculation of the final score. Governments achieving a final score greater than zero will qualify to self-insure.

- The proposed test uses financial parameters developed using data from the 1982 Census of Governments. Data from the 1987 Census of Governments could not be used for today's proposal because they were not available in time to be incorporated into the analysis.

Development of the Worksheet Test

The Agency began the development of the worksheet by reviewing literature on municipal finance and bond rating criteria, and by examining a sample of financial statements from individual local government entities. Based on this review, the Agency identified a number of financial ratios and variables that could potentially serve to differentiate local governments in terms of financial strength. This review, however, did not provide guidance on which specific variables would be most significant, nor did it provide a means of weighting the effects of different variables. For example, it is not clear, a priori, whether the ratios of total funds to revenues and total funds to population are measuring the same effect or different effects. If they are measuring different effects, it is not clear whether they should be weighted the same or differently.

To select specific variables and weights for the worksheet, the Agency analyzed data on general purpose governments (counties, municipalities, and townships) using data from the 1982 Census of Governments. Starting with approximately 60 different financial ratios and variables commonly used in financial analysis, the Agency used a statistical technique called "factor analysis" to group the variables. Factor analysis serves two purposes. First, it identifies underlying characteristics, or factors, that differentiate between the members of a population (in this case, between different counties, municipalities, and townships). Second, it tells how much of the difference (the "percent of variance explained") between the members of the population is accounted for by each factor. The factors themselves are not directly measurable, and are not defined except in terms of the factor analysis. Instead, they are interpreted in terms of which

real variables have a high statistical correlation with them. The Background Document contains a more detailed explanation of the statistical analyses performed, including the factor analysis.

The factor analysis identified a total of 14 factors that distinguish between local government entities. Based on its review of the results of the factor analysis, the Agency identified six factors that (1) captured the variation in financial performance of local governments and (2) appeared appropriate for the UST financial test. The six factors selected are (1) debt burden, (2) funds coverage, (3) outlays per capita, (4) funds per capita, (5) local coverage, and (6) revenues to expenses. In selecting the factors and variables to be included in the worksheet test, however, the Agency rejected size, because the Agency did not wish to exclude financially strong smaller local government entities simply because of size. It must be emphasized that the names of factors are developed through interpretation of the variables most closely associated with the factors, and are not assigned or defined prior to the statistical analysis. The selection of factors was not based on the names assigned, but rather on an analysis of the specific variables most closely associated with each factor. By the design of the analysis, each of these factors is uncorrelated with all of the others, and each measures a different characteristic of local governmental financial operations.

After selecting the factors to be represented in the worksheet, it was necessary to select the specific ratios to represent the factors. In choosing ratios, the Agency wished to (1) keep the total number of ratios to a manageable level, while (2) retaining as large a number of specific indicators as feasible. The final worksheet uses nine ratios, which include the variables (1) debt service, (2) total revenues, (3) total expenditures, (4) population, (5) total funds, (6) local revenues, and (7) current expenses. The ratios selected and the factors that they represent are presented below.

Factor 1—debt burden: debt service to total revenue.

Factor 2—funds coverage: total funds to total revenue, total funds to total expenses.

Factor 3—outlays per capita: debt service per capita, total revenue per capita, total expenses per capita.

Factor 4—funds per capita: total funds per capita.

Factor 5—local coverage: local revenues to current expenses.

Factor 6—revenues to expenses: total revenue to total expenses.

Factor 1 is one measure of a local government's flexibility to meet the expenses of UST releases. A high level of debt service relative to total revenue restricts the amount of the budget that can be reallocated without violating bond covenants and possibly defaulting on other legal obligations. Factor 2 measures the level of reserves maintained by the local government entity relative to its levels of revenues and expenses; higher reserves indicate potentially greater stability. Factor 3 measures the level of local governmental activity. Within limits, higher levels of per capita expenditures and revenues show more intense governmental activity, indicating both a greater demand for services and a higher acceptance of associated charges. If a high level of government spending exists and citizens have not disputed it, the level of spending would appear to be acceptable. However, this high level of per capita revenue can be offset by high levels of debt service per capita, which are interpreted as reducing the ability of local governments to obtain additional loans or to redirect revenues to meet the costs of UST releases. Factor 4 measures the ability of the local government to accumulate funds on a per capita basis; more funds per capita is interpreted to show greater fiscal prudence. Factor 5 measures the extent of local autonomy and independence of uncontrollable intergovernmental expenditures. To the extent that noncurrent expenditures can be deferred more easily than current expenditures, it also measures the ability of local governments to redirect funds to meet the costs of UST releases. Factor 6 measures the ability of local governments to maintain a balanced budget.

Together, these factors provide a balanced view of the stability and financial strength of a local government entity. The Agency does not believe that any single factor or variable can provide a sufficient indication of overall financial stability. Specifically, EPA does not believe a focus on funds alone, without adequate safeguards, would provide as good an indication of the ability of local government entities to provide financial assurance for an UST release.

These factors serve to achieve the Agency's goal of identifying and eliminating those local government entities that have overall financial characteristics that are in the bottom fraction of all local government entities, and that may, therefore, be at sufficient risk of experiencing financial distress that would prevent them from meeting their UST obligations.

In developing the worksheet, the Agency determined that performance on the specific ratios selected to represent the six factors should be standardized so that all ratios are placed on an equal basis. This is done by calculating the "z-value" for each of the ratios in the test. The z-value of an individual ratio is calculated by first subtracting the mean, and then dividing by the standard deviation:

$$z = \frac{(\text{ratio} - \text{mean})}{\text{standard deviation}}$$

The distribution of the z-values will always have a mean of 0 and a standard deviation of 1, thereby placing each variable in the index on a common level. To calculate a single index value, the z-values are then weighted and added together; the weights are based on the percentage of variance explained by the underlying factors.

Selection of the Threshold Value

Having developed and tested the financial index, the Agency then examined different threshold levels to propose a cut-off for selecting those local governments that have fiscal characteristics adequate to demonstrate financial responsibility to meet UST obligations. EPA evaluated the impacts of a \$1 million release to determine an appropriate threshold for allowing local governments to self-insure. In selecting a threshold, the Agency was guided by two important considerations: (1) Most local governmental entities are expected to be able to meet their financial obligations under subtitle I, so a cut-off threshold in the lower range (i.e., 1 to 30 percent) is appropriate, and (2) local governmental entities on the margin of the selected threshold should clearly be able to pay the emergency response and corrective action costs of an average UST release.

For purposes of the evaluation, EPA assumed that the release costs would be financed by a mortgage-type loan over a 20 year period at an interest rate of 10 percent. Under a mortgage-type loan, repayment is made in equal annual installments consisting of both interest payments and principal repayment. The annual payment of a \$1 million loan over 20 years at an interest rate of 10 percent is \$117,459; the first year's payment consists of \$100,000 interest and \$17,459 principal repayment.

To evaluate whether a debt of \$1 million would be too burdensome, the Agency considered the post-release performance on the nine ratios used to develop the index. The Agency paid

specific attention to two financial parameters that financial institutions regularly use to evaluate prospective debtors: Debt service capability and accumulated funds. The Agency felt that it is important to consider the potential debtor's debt servicing capability because excessive debt would require excessive funds for debt servicing, which could result in a negative cash flow (expenditures greater than revenues) for weak debtors. Continuous negative cash flows increase the risk of financial instability in the short run and financial insolvency in the long run. It is important to consider the amount of accumulated funds available to a prospective debtor because a reserve of accumulated funds provides an extra "cushion" for those emergencies when routine cash flows are disrupted as a result of unforeseen circumstances. As long as a local government that is on the margin of the cut-off threshold being evaluated can demonstrate that it can service its debts and has a "cushion" of accumulated funds for emergencies, the Agency feels comfortable that it will be able to perform its routine business when faced with an UST release.

In its evaluation, however, the Agency did not use a precise yardstick for evaluating the impacts of a \$1 million release. It is the Agency's belief that proposing a cut-off threshold that is applicable to the majority of local governments with diverse size, demographic, and financial characteristics is more a matter of informed judgment than one of precise measurement.

Impacts were evaluated on the bottom 30 percent of all general purpose local governments in the 1982 Census of Governments with data sufficient to calculate the index score (about 11,700 governments). For each government, the following adjustments were made to 1982 financial performance in accordance with the definitions of terms used in calculating the index:

- Total expenses were increased by \$100,000 (first-year interest expense);
 - Current expenses were increased by \$117,459 (total incremental debt service);
 - Total debt was increased by \$982,451 (loan amount of \$1 million minus first-year principal repayment);
 - Total funds were reduced by \$117,459 (total incremental debt service); and
 - Debt service was increased by \$117,459 (total incremental debt service).
- In essence, the evaluation was made as if the release had been incurred in 1982 and reflected in end-of-year financial data, with no adjustments made by the local government to redirect funds or to increase revenues.

After adjusting the financial values, each of the nine ratios in the index test was recalculated. Impacts were examined by examining the "marginal" local governments at each threshold in one percent increments. That is, to evaluate the effects of selecting a threshold of -2.704 (the index value exceeded by 95 percent of all general purpose local governments), EPA examined the 378 local governments scoring between -2.704 and -2.532 (the index value exceeded by 94 percent of all local governments). The remainder of this discussion presents results of the "post-release" ratios for each of five different threshold levels: -2.704, -2.073, -1.754, -1.525, and -1.340. Details of the results are provided in the Background Document supporting this rule.

It should be noted that no attempt was made to weigh the potential impacts in terms of the likelihood of UST ownership. That is, although only about 2,700 of the 24,800 local governments serving fewer than 2,000 residents are believed to own USTs, the release costs were imposed on all local governments.¹² Consequently, the average impacts shown exaggerate the actual impacts likely to occur. Also, the results assume that the local governments take no efforts to mitigate the financial impacts, either through increasing taxes and fees or reducing other expenditures.

Because the index ranks local governments in terms of a smooth array, there is unlikely to be a single value at which clear differences in performance appear. Instead, an evaluation of impacts is likely to show increasing performance and ability to accommodate the costs of an UST release with increasing threshold value.

Evaluation of Threshold of -2.704. The marginal local governments meeting a threshold of -2.704 (those between the fifth and sixth percentiles on the index test) have an average post-release fund balance of about \$1.4 million.¹³

¹² U.S. Environmental Protection Agency, *Economic Impact Analysis of the Proposal for a Self-Insurance Test for Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks*, prepared by ICF Incorporated for the Office of Underground Storage Tanks, (in progress).

¹³ A threshold value set at the 5 percentile would exclude the local governments with index values in the lowest five percent and would include the remaining 95 percent. A threshold value set at the 10 percentile would be more stringent—it would exclude the local governments with index values in the lowest 10 percent, and allow only those local governments with index values in the upper 90 percent to qualify for self-insurance.

About 71 percent of the marginal local governments have a negative fund balance, with the average of total funds per capita equal to -\$158. The average debt service per capita is \$270. The average ratio of local revenues to total current expenditures (including debt service) equals 34.8 percent. That is, the revenues derived from local sources would be adequate to meet about one-third of the total current expenses. On average, total revenues are about 58 percent of total expenditures.

EPA estimates that the median "marginal" general purpose government at this threshold (by population) serves approximately 940 residents, or 357 households. EPA's analysis of UST ownership patterns suggests that governments of this size own an average of 1.05 USTs. Based on an average present value cost per UST closure of \$7,000, the residents would incur a present value cost of approximately \$20.57 per household.¹⁴ The present value of closure costs are estimated to range from about \$19.60 to about \$58.70 per household for residents served by median governments owning one to three USTs, respectively.

Evaluation of Threshold of -2.073. With an increase in threshold to -2.073 (corresponding to the 10 percentile), the average post-release fund balance of the marginal local government is still about \$1.4 million, while the percentage of local governments with negative cash balances improves to about 66 percent. The average of total funds per capita improves marginally to -\$157. The average annual debt service per capita decreases to \$254. The ratio of locally derived revenues to total current expenditures has an average of 37.1 percent, a slight increase, whereas the average of the ratio of total revenues to total expenses increases to about 63 percent.

Based on the average number of USTs owned by the median "marginal" general purpose local government, the costs to governments required to close their USTs are estimated to be about \$13.80 per household. Costs may range from \$12.90 to \$38.80 per household for residents served by median governments owning one to three USTs, respectively.

¹⁴ As discussed in the EIA, the present value cost of closure includes the costs of closure associated with the technical standards (e.g., tank excavation and removal, product removal, and site assessment), plus the present value of the incremental cost of fuel purchased at retail service stations, minus the present value of the expected cost of corrective action for UST releases if the USTs were not closed.

Evaluation of Threshold of -1.745. Changing the minimum score to -1.745 (corresponding to the 15 percentile value), the average total funds balance increases to about \$1.8 million. The percentage of local governments with negative fund balances improves slightly, to about 65 percent, while the average ratio of funds per capita improves significantly to -\$125. The average ratio of debt service per capita decreases significantly to \$217. The average fraction of expenses covered by revenues continues to rise: The ratio of local revenues to current expenses increases to 38 percent, whereas the ratio of total revenues to total expenses is about the same at 63 percent.

Based on the average number of USTs owned by the median "marginal" general purpose local government, the costs to governments required to close their USTs are estimated to be about \$13.67 per household. Costs may range from \$12.80 to \$38.50 per household for residents served by median governments owning one to three USTs, respectively.

Evaluation of Threshold of -1.525. At a threshold of -1.525 (corresponding to the 20 percentile value), the average of total funds decreases slightly to about \$1.1 million. The percentage of local governments with negative fund balances remains the same at 65.2 percent, while the average fund balance per capita rises marginally to -\$118. The ratio of debt service per capita improves to \$212. The average ratio of local revenues to current expenditures is approximately the same at 38.3 percent, whereas the ratio of total revenues to total expenses drops somewhat to about 61.7 percent.

Based on the average number of USTs owned by the median "marginal" general purpose local government, the costs to governments required to close their USTs are estimated to be about \$15.05 per household. Cost may range from \$14.10 to \$42.40 per household for residents served by median governments owning one to three USTs, respectively.

Evaluation of Threshold at -1.340. At a threshold of -1.340 (corresponding to the 25 percentile value), the average value of total funds increases somewhat to about \$2 million and the percentage of local governments with negative fund balances decreases to 62.2 percent. The ratio of funds balance to population decreases marginally to -\$132, although the overall trend appears to be virtually flat. The overall trend in the ratio of debt service to population remains flat. On average, local governments show increasing coverage of their expenses, including an increase in the average

ratio of local revenues to current expenses to 43.6 percent and a slight increase in the average ratio of total revenues to total expenses to about 62 percent.

Based on the average number of USTs owned by the median "marginal" general purpose local government, the costs to governments required to close their USTs are estimated to be about \$12.17 per household. Costs may range from \$11.40 to \$34.10 per household for residents served by median governments owning one to three USTs, respectively.

Summary. Generally speaking, improvements in financial performance tend to taper off for threshold values greater than -2.074 (10 percentile) to -1.754 (15 percentile). The primary improvements with an increasingly stringent threshold are (1) the percentage of governments with negative fund balances decreases steadily, and (2) the mean debt service per capita drops from a range exceeding \$240 to \$250 (or more than \$600 per household) for governments with indexes less than -2.073 to a range of about \$217 to \$228 (or about \$560 to \$590 per household) for governments with index values greater than -1.754.¹⁵ The major increase in the ratio of total revenues to total expenditures appears to come between index values of -2.073 to -1.754, with relatively slower increases at higher thresholds.

As a result of this analysis, it appears that a threshold value of -1.754 (corresponding to the 15 percentile) offers reasonable assurance of ability to meet UST releases. Although local governments with threshold values of -2.073 (corresponding to the 10 percentile) have comparable performance on many of the indicators, they are modestly worse on several indicators. A higher threshold, such as the 20 percentile, offers additional stringency, but at the expense of excluding substantially more local governments. The Agency believes that a threshold established at the 15 percentile (-1.745) provides a reasonable balance. To reflect the proposed threshold, the proposed worksheet includes a final addition of 1.754 to the index value calculated by each local government using the worksheet test. Local governments with a final score greater than zero would qualify for self-assurance.

EPA requests comments on the overall appropriateness of using the worksheet test as an allowable mechanism for self-insurance for local government entities.

¹⁵ Assuming 2.6 persons per household.

In addition, the Agency solicits comments regarding the accuracy and completeness of the list of the six characteristics (identified by "factor analysis") that capture the variation in financial performance of local governments and that seem appropriate for the UST financial test. Finally, EPA requests comments on the appropriateness of the 85 percent passing (or 15 percent cut-off) threshold for governments as an indication of a sufficient level of assurance.

3. Governmental Guarantee

In today's rule, EPA is proposing the use of a guarantee mechanism for governmental entities. This mechanism, although not self-insurance, provides local government entities with a financial assurance mechanism comparable to the corporate guarantee allowed for private owners and operators of USTs. To be eligible to act as a guarantor, a local government entity must pass the bond rating or worksheet test.

The governmental guarantee differs in several respects from the current corporate guarantee. Under the governmental guarantee proposed today, local governments would be allowed to choose between a guarantee with or without a standby trust requirement. Under the corporate guarantee, firms are required to use a standby trust. If a local government chooses the governmental guarantee without the standby trust option, it is required to pay for corrective actions as needed and as directed by the implementing agency. Under the standby trust option, local governments will be required to fund a separate trust fund to the full amount of coverage upon discovery of a release. Again, the Agency's decision to allow local governments the option of a guarantee without the standby trust fund is based on local government's history of meeting obligations and on their ability to consistently raise revenue through taxation. In addition, the governmental guarantee requires that the local governments entering into the agreement demonstrate a "substantial governmental relationship." This parallels the requirement in the corporate guarantee for a "substantial business relationship," while recognizing that the types of relationships between governments is fundamentally different than business relationships and that they are primarily based on common or overlapping constituencies.

The requirement of a "substantial governmental relationship" reflects two

concerns of the Agency. First, EPA wishes to ensure that the guarantee contract is founded on a sufficient basis to be held valid and enforceable. Second, EPA seeks to avoid conflict with state insurance laws and regulations. The existence of a "substantial governmental relationship" should provide sufficient nonmonetary consideration to address these concerns.

A guarantee is a promise by one party (the guarantor) to pay specified debts or satisfy the specified obligations of another party (the principal) in the event that the principal fails to satisfy its debts or obligations. In the corporate guarantee, if the owner or operator fails to perform corrective action or satisfy third-party claims, the guarantor agrees to fund a standby trust from which the implementing agency will direct the payment of corrective action costs or third-party claims.

EPA believes that the guarantee mechanism would work well for governments, and is proposing two possible constructions for such a mechanism (discussed below). Using this mechanism, a municipality, for example, might obtain a guarantee from the State, a town might obtain a guarantee from the surrounding county or parish, or a special district might obtain the guarantee of the sponsoring local government entity. Guarantors must demonstrate that they are qualified to provide financial assurance by satisfying the bond rating test under proposed 40 CFR 280.114 or the worksheet test under proposed 40 CFR 280.115.

At present, the Agency is not proposing the need to obtain certification by the State Attorney General prior to offering the guarantee. Local governments have strictly defined and enforced limitations on their abilities to enter into contracts. These limitations are codified in State law and constitution and vary by State. The Agency believes that these restrictions imposed on local government entities should, in general, act as a sufficient check to prevent local governments from entering into invalid guarantees, and that the nature and purpose of local governments will prevent the issuance of guarantees unless there is a clear governmental interest.

The Agency solicits comment on three aspects of the guarantee mechanism. First, should certification by the Attorney General be a necessary precondition to the use of the guarantee mechanism. Second, should passing the fund balance test (described below) qualify a governmental entity to act as a guarantor. Third, is a "substantial governmental relationship" necessary

for developing a contractually valid guarantee. If so, how should such a relationship be defined.

Government Guarantee With Standby Trust

The Agency is proposing a governmental guarantee that parallels the corporate guarantee, in that it must include a pledge to fund a standby trust in the event of failure by the UST owner or operator to pay corrective action or third-party liability claims. In today's proposed rule, the guarantor must have statutory or constitutional authority to issue the guarantee. The Agency anticipates that most guarantees will be based on a clear and significant governmental relationship such as overlapping geographical boundaries, taxing or service constituencies, or shared impact from an UST release.

Government Guarantee Without Standby Trust Requirements

EPA is also proposing a governmental guarantee without a standby trust requirement. Instead, the guarantor agrees to provide funds for corrective action and third party compensation as directed by the implementing agency on an on-going basis, up to the limits of the guarantee. Rather than fully funding a standby trust, the guarantor would make the payments directly as funds are required.

The current corporate guarantee requires the establishment of a standby trust, and requires a guarantor to fund the trust when a release has been detected and the owner or operator has failed to perform corrective action or payment of a settlement or judgement for third party liability. The corporate guarantee requires funding of a standby trust for several reasons. First, the issuance of a guarantee is founded on the existence of a substantial business relationship; such relationships are subject to change over time. Second, the underlying mechanism used by the guarantor depends primarily on the existence of readily liquidated assets, rather than on-going financial strength. Consequently, the Agency wishes to insure that the funds are made available before adverse events can occur. Third, the Agency wishes to reduce the potential delay involved in enforcing first against the UST owner or operator, and then against the guarantor for payment.

These concerns are mitigated under the governmental guarantee. First, the Agency believes that the governmental relationships that are likely to lead to the issuance of guarantees will be founded on geographical proximity and service to a common constituency.

These relationships are not subject to rapid change. Second, the Agency recognizes in this rule that local government entities, as a class, have greater financial stability than private corporations. It is, therefore, less critical to obtain funds immediately to pay for contingent liabilities (such as payment of third party claims) that may not occur. Third, the Agency recognizes the difference in purpose between governmental and private organizations, specifically the role of local governments to serve the public. Consequently, the Agency has less concern that the absence of a standby trust will result in a delay in securing cleanup actions by local government owners or operators. With its modified structure, the proposed mechanism permits a "pay-as-you-go" approach. These provisions allow a guarantor to fund corrective action costs as they are incurred, instead of requiring the guarantor to fund the standby trust fully in advance of anticipated expenditures.

The Agency requests comments on the appropriateness of using the following governmental guarantee structures as mechanisms to provide financial assurance to local government entities: (1) The government guarantee that is similar to the corporate guarantee, and (2) the government guarantee with modified funding requirements.

4. Maintenance of a Fund Balance

Under this option, the UST owner or operator would create a dedicated fund specifically for UST releases or general catastrophic events. Unlike the other local government mechanisms, this option does not require the local government owner or operator to provide any demonstration of overall financial health. In lieu of such a demonstration, the dedicated fund must meet the local government's aggregate financial responsibility requirements (or such amount needed to fulfill gaps in financial responsibility from other mechanisms used in combination with the funded balance.) Unlike the worksheet test, which allows an eligible local governmental entity to recognize all of its cash and marketable securities, use of the fund balance mechanism requires local governmental entities to establish irrevocable trusts pledged to use for UST response or use in responding to catastrophic events, including UST releases.

Unlike the third-party trust fund arrangements authorized for use by nongovernmental owners and operators, however, control of the fund would continue to rest with the local government entity. The Agency

determined that a third-party requirement for local governments similar to the requirement for a corporate fund was not necessary because of the experience of local governments in establishing and administering such funds. Although corporations do establish pension funds, they are required to administer them separately from the corporation. Corporations report pension funds and pension obligations on their financial statements as funded or unfunded liabilities incurred by the corporation. Although an explanation of the methods used for calculating pension liabilities may be included in the notes to the financial statements, the operations and status of the pension fund itself is not part of the corporate activities. Aside from pension funds, corporations rarely operate in the capacity of a trust managing dedicated funds.

In contrast, local governments operate on the basis of funds accounting, where individual government activities (including trust accounts, reserve funds, and contingency funds) are accounted for and reported separately. Typical funds include capital outlay, general operating, and enterprise funds. Local governments often self-administer their worker's compensation funds. In addition, local governments that administer their pension funds present the funds as a statement of financial responsibility of the local government treasurer, rather than as a semi-independent, third-party liability. That is, the assets and the activities of the fund are presented in the financial statement in the discussion of trust and agency funds, and the investments of the funds are provided in a schedule of the treasurer's accountability. Maintenance of the dedicated fund is, therefore, consistent with normal government operations and accounting. Control and accounting for these funds would be administered following the standards appropriate for other insurance trusts already maintained by local government entities, including pension trusts and worker's compensation funds.

The fund balances under the proposed fund balance option must be held as cash or investment securities that will be available in the event of an UST release and must be irrevocably dedicated to use for UST response or for responding to catastrophic events, including UST releases. As discussed below, the Agency is proposing three alternatives that may be used in establishing the fund.

In proposing this option, the Agency recognizes that States often permit local governments to administer fiduciary and

trust accounts, such as pension funds and workers' compensation funds, while requiring private companies to establish third-party trustees or to subscribe to State-maintained funds. EPA believes the distinction between local government entities and private companies reflects differences in State oversight (e.g., State requirements that local government entities submit budgets or financial statements), differences in purpose (i.e., companies exist to make profits, whereas local governmental entities are created to provide a public service), and differences in financial stability.

Having funds available as cash (or suitable liquid investments) provides a readily verifiable guarantee, and is similar to current practices for maintaining contingency funds for emergencies. Some local government entities may be unable to obtain adequate bond ratings or otherwise demonstrate adequate capability to meet the potential expenses of UST emergencies. Others, although qualifying to use the bond rating or worksheet test, may prefer to establish a dedicated fund. By allowing the use of a fund, the proposal allows continued operations of USTs and provision of municipal services, guarantees the availability of the most critical emergency response funds, and minimizes expenses to the affected community.

The proposed fund balance mechanisms provide assurance at least as great as the corporate financial test. Although the corporate financial test includes a ten million dollar net worth requirement, it includes no stipulations regarding the form of the net worth. The mechanisms described below require local governments to maintain the fund balances as cash or investment securities, ensuring that the funds are able to be used to respond quickly to an UST emergency. These funds may not be commingled or otherwise used in normal operations.

Based on an analysis of Census data and data on Minnesota cities, the Agency believes that the fund balance mechanism is unlikely to be used widely by general purpose governments, because few who require an alternative mechanism to the bond rating and worksheet tests have adequate funds.¹⁶ The fund balance mechanism may prove more useful for special districts and school districts that may not be able to use the worksheet test. The inclusion of

¹⁶ State Auditor of Minnesota, "Report of the State Auditor of Minnesota on the Revenues, Expenditures, and Debt of the Cities in Minnesota for the Fiscal Year Ended December 1987," November 1988.

a fund balance mechanism as a financial assurance option should increase the flexibility provided owners and operators in demonstrating financial assurance. Today EPA is proposing the following three sub-options, any one of which may be used to demonstrate financial responsibility.

Fully-Funded Dedicated Fund

Under this alternative, the local government would establish a separate fund, dedicated to payment of UST corrective actions and third party liability claims, in the amount of its aggregate financial responsibility requirements. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. This mechanism would be the most similar to the corporate trust fund option (§ 280.102 of subpart H) and is intended to be similar to "trust accounts" and "insurance accounts" held by local governments for pensions and insurance. Although there are currently no restrictions to local governments using the trust fund option, the fully-funded dedicated fund option would not require the local government to establish a third-party trustee for the fund. Instead, the fund would be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

Catastrophic Events Contingency Fund

Under this option, a municipality would be able to use a dedicated fund used for general emergency response and third-party liability (e.g., flood relief, hurricane relief, or other environmental cleanups) as evidence of UST financial responsibility. To insure the availability of funds, the combined fund balance must equal or exceed ten times the aggregate financial assurance level for the local government entity, based on the number of USTs owned and operated. This requirement parallels the requirement in the corporate self-test that firms must have tangible net worth equal to at least ten times their aggregate financial assurance level. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. The fund may be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

In proposing this option, the Agency recognizes that States often permit local governments to administer fiduciary and trust accounts, such as pension funds and workers' compensation funds, while

requiring private companies to establish third-party trustees or to subscribe to State-maintained funds. EPA believes the distinction between local government entities and private companies reflects differences in State oversight (e.g., States requirements that local government entities submit budgets or financial statements), differences in purpose (i.e., companies exist to make profits, whereas local government entities are created to provide a public service), and differences in financial stability.

The Agency is proposing this option to allow municipalities flexibility in establishing emergency response funds while ensuring that adequate funds are available to respond to an UST release. Although the Agency lacks data on municipal expenditures for general emergency response and third-party liability, it believes the \$10 million requirement will assure the availability of funds for an UST release should other catastrophic events occur in the same year. Thus, although the fund would not be solely dedicated to responding to UST releases, the greater required fund balance will assure adequate resources to respond to an UST emergency.

Incrementally Funded Trust Fund Combined With Unused Bonding Authority

Under this option, a municipality would be required to fund a dedicated fund for UST releases incrementally, making payments equal to at least one-seventh of the aggregate liability each year. A municipality using this alternative must fully fund the trust fund by the beginning of the seventh year. The Agency chose the seven-year period to coincide with the final compliance dates in the UST technical regulations. Thus, this mechanism ensures that the municipality has a fully funded dedicated trust fund by the time the UST technical requirements are in full effect. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. The fund may be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

In addition, until the dedicated fund is fully funded, the municipality is required to demonstrate the authority to issue a specified amount of general obligation bonds to respond to an UST release. The authority may consist of either a voter-approved bond referendum specifically targeted for payment of the costs associated with an UST release, or certification from the State Attorney General that the government has the

authority to issue the bonds without voter approval and that the proceeds of these bonds can be used to respond to an UST release. The Agency is requiring the unused bonding authority to ensure that municipalities have resources to respond to UST releases while allowing them to develop a dedicated fund over time.

The Agency believes this mechanism is appropriate for local government entities, but not private companies, for several reasons. First, local governments operate under statutory and constitutional limitations on debt issuance. By requiring prior voter approval or certification that such approval is not necessary, the Agency is relying on safeguards that do not exist for private companies. Second, local government entities exist to provide a public service, whereas private companies do not. Third, local government entities have historically been much more stable than private companies. Fourth, local government entities have an ability to levy taxes or raise fees and charges that is not available to private companies.

In developing this option, the Agency learned that local government entities will frequently obtain a bond referendum before incurring costs related to specific projects, such as construction projects, and will delay the issuance of the bonds until the funds are needed. The Agency was also informed that New York law allows local governments to issue debt to pay certain obligations without passing a bond referendum. The Agency is also considering that the Tax Reform Act of 1986 penalizes local government entities for investing the proceeds of tax exempt bond issues. Thus, the Agency recognizes that there is both a precedent for having unused bonding authority and an incentive not to issue bonds unless necessary for actual payment of debts.

EPA solicits comments on the appropriateness of local governments using the following fund balance mechanisms in demonstrating adequate capability to meet the potential expenses of UST emergencies: (1) A fully-funded dedicated fund, (2) a catastrophic events contingency fund, and (3) an incrementally-funded trust fund combined with unused bonding authority.

5. Combinations of Mechanisms

The mechanisms being proposed today may be used by themselves or in combination with other mechanisms. Local governments qualifying for use of the bond rating or worksheet test mechanisms are not required to obtain additional evidence of financial

responsibility, but may do so if they so choose. A guarantee or dedicated fund balance may be used to demonstrate financial responsibility for amounts not assured by other mechanisms.

B. Mechanisms Considered But Not Proposed

In developing today's proposed rule, the Agency examined and rejected several alternative mechanisms.

1. Multiple Criteria Test

One financial mechanism that EPA considered but did not propose in today's rule is a multiple criteria test for use in the worksheet mechanism. This variant of the worksheet test would also incorporate several variables, but would establish a threshold level (defined as the values corresponding to specific percentiles of the overall distribution of each variable) for each variable used in the analysis. In order to pass the test, a municipality would have financial ratios exceeding the threshold level for each one of the criteria individually.

After an initial analysis of test data, EPA decided that the multiple criteria test would not be the most effective measure of a municipality's ability to demonstrate financial responsibility for underground storage tanks. Using a data base of financial information on Minnesota cities,¹⁷ the Agency administered this self-test to various bond-rated and non-rated cities in order to determine if there were any significant differences in these entities' respective frequencies of passing the test. The results showed that non-rated cities generally had a higher percentage of passing this test than did cities with bond ratings. In addition, EPA noted that, in some instances, highly rated cities passed the self-test with lower frequency than did some relatively lower rated cities. The Agency interpreted this finding as showing that the multiple criteria test does not allow for relative strengths in terms of some financial ratios to offset relative weaknesses.

EPA's reservations on the use of a multiple criteria test for demonstrating financial responsibility under subtitle I centered on two perceived drawbacks. First, even relatively lenient thresholds, if applied to a large enough number of individual variables to capture a full picture of the financial structure of a local government, lead to the rejection of a large fraction of the regulated

¹⁷ State Auditor of Minnesota, "Report of the State Auditor of Minnesota on the Revenues, Expenditures, and Debt of the Cities in Minnesota for the Fiscal Year Ended December 1987," November 1988.

community. Because the Agency believes that most local governmental entities can meet their UST obligations, such stringency was not deemed necessary to demonstrate financial responsibility under subtitle I. Instead, the Agency believes that the index-based test, which allows positive factors to compensate for some financial weaknesses, provides a better criterion. Second, the Agency believes that a failure to meet a specific threshold for a single financial variable should not necessarily disqualify a local governmental entity under subtitle I if other financial indicators are sufficiently strong. Other EPA programs that impose higher, more certain costs, may warrant more stringent financial responsibility criteria.

2. Credit Card Approach

Another potential mechanism for demonstrating financial responsibility would be the use of State-sponsored "credit cards" for LUST corrective action, with a structure similar to that of revolving credit loans. Municipalities and governmental entities would pay an annual fee for the use of these "credit cards", and the State would lend funds when needed. The municipality would then pay back the balance of the loan over time.

EPA believes that this approach would require extensive variations between States. If States wish to allow or require this mechanism, they may do so under the final rule published in October 1988. In addition, a State may act as a guarantor under Option 3 of today's proposed rule in exchange for a comparable contractual arrangement.

3. Intergovernmental Risk Pooling

Under intergovernmental risk pooling arrangements, several governments within a State contribute money in order to capitalize the pool, and then each owner or operator pays an annual premium per tank. Insurance experts and actuaries are consulted to calculate the appropriate level of capitalization and the premiums based on the expected risk of UST releases occurring. When a release occurs, money from the pool is used to pay for any resulting corrective action costs as well as the third-party liability costs. This mechanism is similar to the option of forming a risk retention group (RRG) under the Risk Retention Act of 1986. Most governmental entities have had trouble forming RRGs because of state laws restricting participation of public entities. There are a few States that have passed legislation to allow intergovernmental risk pooling with less State oversight, or lower capitalization

requirements than RRGs. For example, Maryland has passed such legislation, and an intergovernmental risk pool to cover damages and liability resulting from UST releases has been formed.

At present, the Agency is unable to propose an allowable risk pool mechanism at the Federal level, although the Agency does consider risk pools to be a promising mechanism for development at the State level. As yet, the Agency has found an insufficient number of risk pools to develop a prototype suitable for proposal as a Federal requirement. Also, the Agency is unaware of any operating experience by risk pools that include UST coverage within the pool; as of January 1990, for example, the Maryland pool had not yet completed capitalization of the pool and had no operating experience. Also, the Agency is aware that there are significant differences in the authorities and responsibilities given to local governmental entities under State constitutions and statutes, so that the formation of risk pools will necessarily differ between States.

Several commenters on the proposed financial assurance regulations (52 FR 12785, April 17, 1987) expressed concern that the rule did not allow risk pooling. Under § 280.100, if a state does not have an approved program, but does require owners and operators to demonstrate financial responsibility, the state, an owner or operator, or any other interested party may request the Regional Administrator to allow a state-required mechanism to be considered acceptable for meeting the requirements of § 280.93. Thus, although today's proposal does not specifically permit the use of risk pooling as a mechanism for demonstrating financial responsibility, the mechanism is available to municipalities upon approval under § 280.100.

4. General and Total Fund Balance Options

These options are two variations of fund balance mechanisms that the Agency has considered and decided not to propose in today's rule. Under the general fund balance, the local government would be required to maintain a general fund balance meeting levels required in subtitle I.

The total fund balance option would require the local government to maintain a total fund balance meeting the levels required in the rule. Total funds would include general funds and any other fund balances, such as sinking funds, special assessment funds, debt service funds, and enterprise funds, but would exclude trust funds that must be maintained as segregated accounts.

Municipalities using the total fund balance mechanism would need to certify that they are authorized to engage in interfund loans, so that money from reserved funds could be made available.

EPA is not proposing these mechanisms because it believes that these options conflict with the reasoning behind the worksheet test; they rely completely on fund balances to analyze a municipality's financial health, whereas the worksheet test uses fund balances as only one of several measures of a municipality's financial health. In addition, the size of the fund balance at a specific point in time (the end of the local government's fiscal year) does not provide sufficient assurance of the overall strength and stability of the entity. Finally, EPA considers the mechanism insufficient because there are no restrictions on the use of the funds, which means there is no assurance that they would not be spent for other purposes.

5. Optional, Performance-based Guarantee for Cleanup Requirements

Under this option, a local government guarantor would promise to undertake specific performance (i.e., perform corrective action) not met by the guarantor rather than promising economic assurance. In contrast to the financial guarantees allowed under the October 1988 rule and proposed today, the guarantor would be promising to provide a service clean up of an UST release to meet corrective action standards—rather than to provide money for expenditure by the implementing agency. The obligation would simply be the recitation of the corrective action requirements of the technical standards. The standby trust obligation would be unnecessary. The owner and operator would still need to demonstrate financial assurance for potential third party damages, but this requirement could be fulfilled through a second guarantee contract, insurance, or any other allowed mechanism or combination of mechanisms. In considering this option, EPA reviewed literature on guarantees that suggested that specific performance guarantees are commonly used commercially, and may be more common than the strictly financial guarantees for financial responsibility allowed by the October 1988 rule.

EPA decided not to propose this option for the following reasons. Subtitle I's requirement that financial assurance be available for corrective action might be viewed as requiring a purely financial commitment, rather than

imposing a duty that can be backed up by promise of performance. Moreover, if the corrective action requirement is separated from the third-party damages requirement, the subsequent apportionment of available funds might be difficult to describe in terms of the statutory scheme for financial assurance. Past approaches to financial responsibility have held that splitting assurance for corrective action and third-party damages into two separate mechanisms requires that each mechanism be funded to the full level of assurance.

A more serious problem could potentially result from local governmental entities without adequate technical expertise to respond to an UST release acting as guarantors under performance contracts, but failing to handle releases adequately. A worst case scenario would have incompetent parties unwittingly increasing the degree of contamination so that funds set aside through the financial test become insufficient to meet the eventual costs of cleanup. This arrangement would require considerably more guidance on roles, cleanup, mixed funding/performance accounting, and other key response features than do the more straightforward options being proposed today.

Although all these concerns could be addressed through the development of additional certification procedures, the Agency does not believe that the additional effort and complexity required to develop this option is warranted, and does not believe that the establishment of a Federal certification program is consistent with the statutory mandate of subtitle I to be implemented primarily at the State level. Although this mechanism has not been selected as an allowable option under Subtitle I, its use under other environmental regulations must be evaluated in light of the statutory intent of those specific programs.

C. Reporting by Owner or Operator

Each government demonstrating financial assurance using the mechanisms proposed today must notify the implementing agency at the times specified in § 280.108.

D. Recordkeeping

Owners and operators are required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart until the tank has been properly closed or, if corrective action is required, until corrective action has been completed and the tank has been properly closed as required by 40

CFR part 280, subpart G. In general, the recordkeeping requirements for the mechanisms being proposed today are equivalent to those required for the mechanisms promulgated in the October 1988 rule. Because local governments are not uniformly required to submit data to third party agencies, however, local governments using the worksheet test must maintain a copy of the underlying financial statements or other data used to support the use of the worksheet test. Also, local government owners and operators must maintain evidence of the authority that is used to establish dedicated funds for use in responding to UST releases. An owner or operator using the mechanisms proposed today is required to maintain at his UST site or place of business the following types of evidence for mechanisms used to demonstrate financial responsibility:

Bond Rating Test. Each local government using the bond rating test must maintain

- (1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the eligibility to use the bond rating test, and
- (2) Originally signed and dated transmission from Moody's or Standard & Poor's, showing the amount, the type of bond and the bond rating assigned.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Worksheet Test. Each local government using the worksheet test must maintain

- (1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the accuracy of the calculations and the underlying data,
- (2) A copy of the completed worksheet, and
- (3) A copy of the underlying financial data (e.g., year-end financial statements) used to compute the worksheet.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Guarantee. Each local government using the guarantee must maintain

- (1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the use of the guarantee,
- (2) An originally signed and dated guarantee contract, showing the addresses of all tanks for which financial assurance is guaranteed, the nature of the guarantee (third-party liability, corrective action, or both), and the limits of the guarantee,

(3) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) of the guarantor certifying the eligibility to use the bond rating test or worksheet test (unless the guarantor is a State),

(4) For guarantors other than States, a copy of the documentation supporting the bond rating or worksheet test, including (a) a copy of the originally signed and dated transmission from Moody's or Standard & Poor's to the guarantor, showing the issue size, the type of bond and the bond rating assigned, or (b) a copy of the completed worksheet and underlying financial data, and

(5) Originally signed duplicates of the standby trust funds worded as specified in this rule for guarantees, surety bonds, or letters of credit (as necessary).

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Fund Balance. Each local government using the fund balance mechanism must maintain

- (1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the use of the fund balance mechanism,
- (2) Originally signed letter certification from the comptroller or treasurer worded as specified in the rule and letters or certificates from municipalities regarding coverage by municipal funds or other municipal assurances,

(3) A copy of the authorizing statute or resolution that clearly restricts use of the funds to the designated purposes,

(4) A financial statement showing the balance of cash or liquid investments in the fund, and

(5) A copy of either (a) the authorized bond resolution in an amount equalling or exceeding the unfunded portion of the fund or (b) State Attorney General's opinion showing that such authorization is unnecessary.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

The Agency hereby solicits comments on the recordkeeping requirements for mechanisms used to demonstrate financial responsibility.

E. Bankruptcy or Other Incapacity of the Owner or Operator

Any owner or operator named as a debtor in voluntary or involuntary bankruptcy proceedings (under title 9 of the U.S. Code) is required to notify the Regional Administrator or the implementing agency within 10 days

after commencement of such proceeding. In addition, the guarantor or indemnitor is required to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under title 9 (Bankruptcy) of the U.S. Code that names such guarantor or indemnitor as debtor. Any owner who demonstrates financial responsibility using a mechanism other than the financial assurance self-test will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of a provider to issue a guarantee, indemnity contract, surety bond, insurance policy, risk retention group coverage policy, letter of credit, or state-required mechanism. Finally, municipalities are required to notify the Director of the implementing agency within 30 days of being notified that a provider of financial assurance (e.g., a guarantor) has declared bankruptcy or is otherwise incapable to cover assured costs, unless they are able to obtain alternative coverage. EPA requests comments on today's proposed requirements for notification by UST owners and operators of concerned parties of bankruptcy or incapacity of its provider of financial assurance.

V. Economic Impact Analysis

In conjunction with this proposed rule, the Agency has performed four impact analyses: An Economic Impact Analysis, a Regulatory Flexibility Analysis, a Federalism Assessment, and a Paperwork Reduction Act estimate. Summaries of these analyses are presented below:

A. Economic Impact Analysis

This section describes the methodology and results of an Economic Impact Analysis of the proposed rule. EPA estimates that about 19,565 local governmental entities will be able to demonstrate financial responsibility using the mechanisms proposed today that would not be able to demonstrate financial responsibility using only the mechanisms allowed by the October 1988 rule. The Agency estimates that the use of these mechanisms will result in approximately 40,790 fewer USTs being closed because of a lack of financial assurance, at a total cost savings of about \$288 million over ten years.

1. Compliance with E.O. 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that a regulatory agency examine the potential impact of regulations. The regulatory agency must determine whether a new

regulation will be "major." If it is, the regulatory agency must conduct a regulatory impact analysis (RIA). A major rule is defined as one that is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in the costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has analyzed the proposed local government financial responsibility rule. Based on this analysis, the Agency has concluded that this regulation will have annual costs of less than \$100 million. The rule, in fact, is expected to reduce costs to the regulated community rather than increase them: these reductions are estimated to be less than \$100 million on an annual basis. Accordingly, the regulation being proposed today is not a major rule, as defined by E.O. 12291. Nonetheless, the Agency is interested in the potential economic effects of the regulation and has developed an Economic Impact Analysis (EIA) to examine them. The following four sections summarize the results of the EIA: Section 2 describes the regulated community affected by this regulation; Section 3 presents some of the methods and assumptions used to produce the EIA; Section 4 discusses the regulation's cost impacts; and Section 5 describes its environmental impacts.

2. The Affected Community

EPA estimates that approximately 29,000 local government entities own more than 62,000 petroleum-containing USTs. For the purpose of this analysis, the regulated community is divided into six categories: Large, medium, and small general purpose governments (i.e., cities, counties, and townships); and large, medium, and small special purpose districts (including, for example, independent school districts and water districts). General purpose governments are categorized according to population: large governments have populations greater than 200,000 persons, medium governments have populations between 2,000 and 200,000 persons, and small governments have populations less than 2,000 persons. Special purpose districts and school districts, which do not always have well-defined populations, are categorized according to annual revenue: Large districts have annual revenues greater than \$100 million, medium districts have annual revenues between \$300,000 and \$100 million, and

small districts have annual revenues less than \$300,000.

Table 1 shows the estimated total number of governments in each category, the number of UST-owning governments in each category, and the number of USTs owned. (A summary of the method used to develop these estimates is provided below.) EPA estimates that 271 large general purpose governments own approximately 7,200 USTs, approximately 14,000 medium general purpose governments own approximately 21,500 USTs, and nearly 25,000 small governments collectively own fewer than 3,000 USTs. That is, most small governments are not estimated to own any USTs. EPA estimates that 108 large special districts own about 3,200 USTs, approximately 18,700 medium districts owning roughly 26,300 USTs, and nearly 25,000 small districts own about 900 USTs. All large local government entities are assumed to own at least one UST. The Agency used probability theory and an estimate of the total number of USTs owned by all UST-owning entities to calculate the percentage of medium and small government entities that own USTs.

TABLE 1.—PROFILE OF LOCAL GOVERNMENTS

Category	Number of entities	Number of entities owning USTs	Total USTs owned
Large Governments.....	271	271	7,243
Medium Governments....	13,827	10,902	21,471
Small Governments.....	24,790	2,725	2,887
Large Special Districts...	108	108	3,157
Medium Special Districts.....	18,671	14,118	26,342
Small Special Districts...	24,899	884	899
Total.....	82,566	29,008	61,999

Source: EPA analysis.

3. Assumptions and Methodology Used in the EIA

The analysis uses several key assumptions to estimate the costs and other impacts of this proposed regulation:

- The baseline used to estimate incremental costs and economic impacts of the proposed self-test rule is the cost of complying with the financial responsibility rule published on October 26, 1988. EPA assumes that local government entities will comply using the options available under the October 1988 rule in the absence of the proposed alternative mechanisms. Local governments unable to use the financial mechanisms available under the

October 1988 rule are assumed to close their USTs, in compliance with the regulations.

- The estimated number of USTs owned by local governments is based on a derived relationship between the annual revenues of local governments and the number of USTs owned.

- The 1985 *Summary of State Reports on Releases From Underground Storage Tanks* provides data on the percentage of releases occurring in places of different populations

- EPA assumes that release incidents are not biased towards places of different size and that the distribution of release incidents is the same as the distribution of USTs among local government entities

- The analysis assumes that there are about 62,000 local government USTs, as estimated in the financial responsibility rule published in October 1988.

- The analysis uses budget data obtained from the 1982 Census of Governments to develop a relationship between budget and population and then between budget and number of USTs.

- All local governments using insurance or mandatory state assurance funds to meet financial responsibility requirements for corrective action and compensation of third-parties in the baseline are assumed to continue to use those mechanisms to comply with the financial responsibility requirements, rather than using the mechanisms proposed today.

- All other local government entities that qualify for self-insurance are assumed to incur costs comparable to the estimated cost of the corporate financial self-test (\$30 per year) to develop and maintain the required records and reports. The cost differential between mechanisms is low, especially in comparison to the relatively high costs of the alternative (that is, UST system closure).

- Because local governments that do not qualify for self-insurance are assumed to be unable to obtain insurance or otherwise demonstrate financial responsibility, the analysis assumes that they close their UST systems and purchase fuel from retail petroleum dealers.

EPA estimated the fraction of local government entities that will be able to demonstrate financial assurance under the proposed rules by assuming that governments not able to obtain insurance and not required to use state mechanisms will use the least onerous method for which they qualify:

- Local governments able to obtain insurance are assumed to use insurance rather than use the mechanisms being proposed today.

- Local governments in states with mandatory assurance programs are assumed to use them rather than the mechanisms being proposed today.

- Local governments with outstanding issues of investment grade bonds in amounts greater than \$1 million (about 87 percent of all governments with investment grade ratings) are assumed to use the bond rating test. Analysis of data on Minnesota cities suggest that virtually all cities with populations of more than 10,000 have investment-rated general obligation bonds, and that virtually no cities with populations less than 2,000 have such bonds.

- Local governments not eligible to use the bond rating test are assumed to use the worksheet test, if they qualify. The Agency used the 1982 Census of Governments to estimate the fraction of governments with populations less than 200,000 or annual revenues less than \$100 million (i.e., those that may not qualify to use the bond rating test) that qualify at the 15 percentile threshold.

- The Agency assumes that local governments with total fund balances greater than \$4 million that do not qualify to use the worksheet test will establish a dedicated fund meeting the

proposed requirements. Data from the 1982 Census of Governments were used to estimate the percentage of governments having more than \$4 million in funds that would not qualify under the worksheet test.

- The Agency assumes that school districts unable to demonstrate financial responsibility will obtain guarantees from surrounding general purpose governments. This assumption is based on an implicit, further assumption that education will be deemed to be of sufficient importance that the general purpose governments served by school districts will act to insure that the USTs remain in operation.

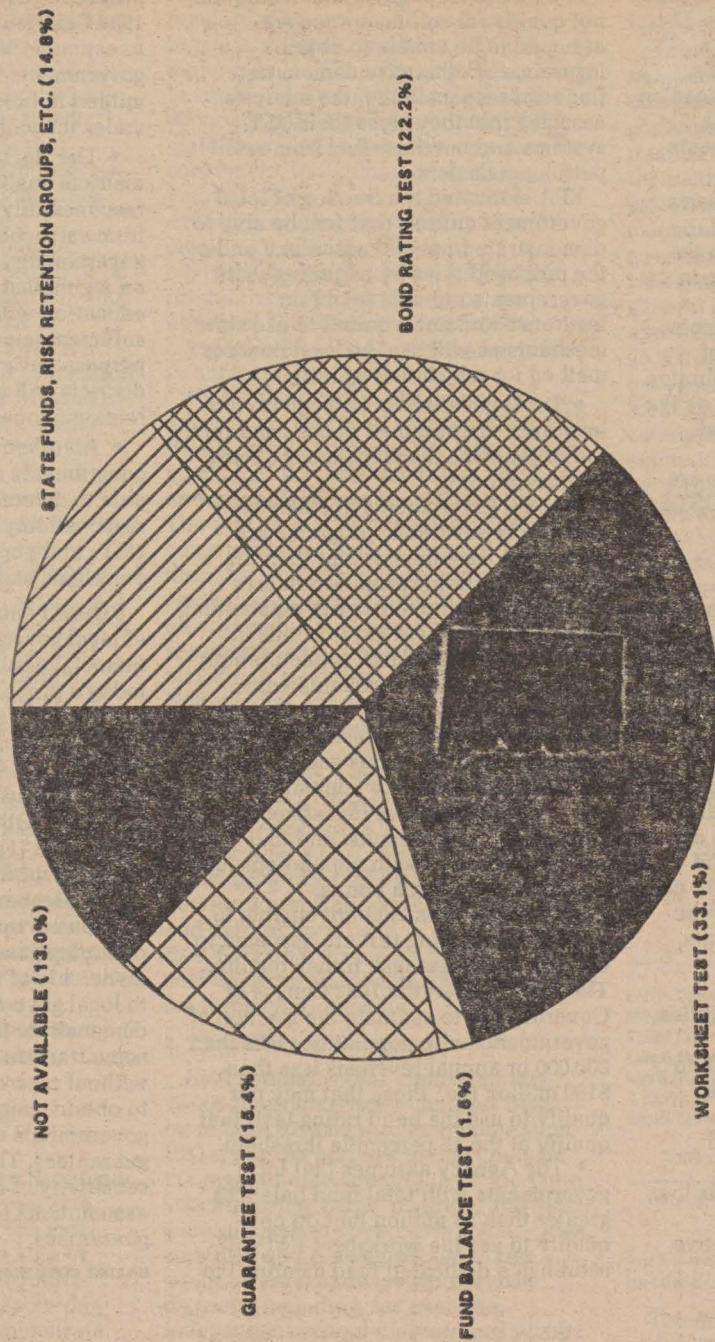
- All other general purpose governments and special districts not able to demonstrate financial responsibility are assumed to close their USTs and purchase fuel from retail petroleum stations.

Figure 1 shows the estimated fraction of local governments using each financial assurance mechanism under today's proposal. It should be noted that the assumed availability of guarantees—that all school districts, and only school districts, are able to obtain guarantees represents just one of many plausible outcomes. Other possible outcomes range from (1) all governments failing to obtain insurance or qualify using one of the self-test mechanisms will be able to continue to operate their USTs, either by obtaining guarantees or by transferring ownership of their USTs to the state or to local governments able to demonstrate financial responsibility, (2) some fraction of all governments, without regard to purpose, will be able to obtain guarantees, or (3) no governments will be able to obtain guarantees. The EIA discusses the sensitivity of the results to alternative assumptions about the availability of guarantees.

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Figure 1**Preliminary Estimates of Use of Financial Assurance Mechanisms**

Counties, Municipalities, Townships, School Districts, and Special Districts



Source: ICF Analysis of 1982 Census of Government;
Brenda Ramos, Moody's Investors Service, letter to
Linda Reidt Critchfield, EPA, July 12, 1988.

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4. Cost Impacts

The cost impacts of the proposed rule are measured as the difference between

the costs of complying with the October 1988 financial responsibility rule and with the proposed rule. Table 2 shows

the estimated change from the baseline by type and size of local government.

TABLE 2.—SUMMARY OF RESULTS OF ECONOMIC IMPACT ANALYSIS

	General purpose governments			Special districts		
	Large	Medium	Small	Large	Medium	Small
Number of UST Owning Governments.....	271	10,902	2,725	108	14,118	884
Response Under Oct. 1988 Rule						
Number of Governments Demonstrating Financial Responsibility.....	122	2,180	409	43	2,823	88
Number of USTs Covered by Financial Responsibility.....	3,259	4,294	433	1,421	5,268	90
Number of USTs Closed.....	3,984	17,177	2,454	1,736	21,074	809
Cost (\$ millions).....	28.6	122.8	17.4	12.5	150.7	3.5
Response Under Proposal						
Additional Governments Demonstrating Financial Responsibility.....	149	7,776	1,992	59	9,301	288
Additional USTs Remaining in Operation.....	3,984	15,316	2,110	1,736	17,353	292
Cost Savings (\$ millions).....	28.7	108.8	14.7	12.5	122.4	1.3

Source: EPA, "Economic Impact Analysis for the Local Government Self-Test Rule for Demonstrating Financial Responsibility for Underground Storage Tanks," U.S. Environmental Protection Agency, Office of Underground Storage Tanks (in progress).

Over a ten year period, the total costs of complying with the October 1988 financial responsibility rule are estimated to be about \$336 million, whereas the costs of complying with the proposed rule are about \$48 million. The proposed rule, therefore, is estimated to result in a net savings of approximately \$288 million. Most of the savings result from fewer mandatory closures under the proposed rule than in the baseline, with additional savings earned from the difference between wholesale and retail prices for fuel.¹⁸ EPA estimates that the average savings per local government entity (irrespective of UST ownership) will be about \$3,500, with an average saving of about \$9,900 per UST-owning government over the ten year period. Most of these savings will be realized in the first two years, because the October 1988 rule requires that local governments without financial assurance close their USTs within this time. The Agency estimates that large general purpose governments will save nearly \$29 million and large special districts will save more than \$12 million under the proposed rule. Large UST-owning governments are expected to realize savings of more than \$100,000 each, or about 0.04 percent of their typical annual budget. The Agency expects that all large entities estimated to close their USTs in the absence of the proposed rule will qualify for self-insurance under today's proposal.

¹⁸ The only entities that save under the proposed rule are those that would have closed their USTs in the baseline and choose the self-test under the proposed rule and those entities that use a third party mechanism in the baseline (other than insurance and state funds) and the less costly self-test under the proposed rule. Far more entities are in the former category than the latter.

The classes of medium general purpose governments and medium special purpose districts are each expected to save more than \$100 million, or about \$9,900 per UST-owning general purpose government and \$8,700 per UST-owning special district. The estimated savings equal about 0.17 percent of the typical budgets of medium general purpose governments and medium special districts. The Agency expects about 9 percent of medium general purpose governments and 14 percent of medium special districts to close their USTs under the proposed rule, as opposed to 80 percent under the October 1988 rule.

Small general purpose governments are expected to save about \$15 million and small special purpose districts to save \$1.3 million under the proposed rule. The aggregate savings for the categories of small entities are smaller than those for larger local government categories because relatively few small entities own USTs. When savings are compared to the typical budget size of UST-owning entities, however, small local governments experience the largest savings. The savings under the proposed rule amount to almost 2.7 percent of the budgets of small governments and almost 1 percent of the budgets of small special districts. Small entities save more relative to their budgets for two reasons: (1) The costs of closure are a larger percentage of their budgets; and (2) those entities with USTs spend proportionately more on fuel than medium and large entities and, therefore, save proportionately more by reduced fuel costs.¹⁹ In the absence of

¹⁹ In general, small entities do not own USTs; the Agency estimates that fewer than 3,600 of the nearly

the proposed rule, EPA estimates that 85 percent of small governments and 90 percent of small districts would be unable to demonstrate financial responsibility and forced to close their USTs; under the proposed rule, only an estimated 12 percent of small general purpose governments and 57 percent of small special districts are estimated to be forced to close their USTs.

5. Environmental Impacts

The proposed rule has potential environmental impacts as well as economic impacts. As a result of the proposed rule, more local governments may qualify for self-insurance and more tanks may remain in operation. Because there is always some risk that an UST will have a release, there will inevitably be more spills, overfills, and tank system leaks than would occur in the absence of the proposed rule. All local government USTs, however, are subject to the requirements established by the UST technical standards rule, which is designed to minimize the human health and environmental risks from underground storage tank operations. In addition, the proposed rule requires local governments to demonstrate the ability to respond to UST releases to minimize potential environmental damages. EPA believes, therefore, that any negative human health and environmental effects resulting from the proposed rule will be minimal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires all Federal agencies to review

50,000 small entities own USTs. EPA infers from this that those entities that do own USTs use them intensively, incurring fuel costs as much as seven percent of their annual budgets.

the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the agency must prepare a Regulatory Flexibility Analysis. As discussed above in the discussion of the Economic Impact Analysis, EPA has determined that this rule will provide net benefit to small local governments by reducing their costs to comply with the financial assurance provisions of Subtitle I. Under today's proposal, the Agency expects approximately 2,280 fewer small local governments to be required to close their USTs than under the October 1988 final rule. The estimated total cost saving of approximately \$16 million equals about \$7,000 per UST-owning, small local government entity eligible to use the proposed mechanisms. Accordingly, the Agency has concluded that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

In conjunction with this proposed rule, the Agency has prepared an analysis of the information collection requirements contained in the rule. The information collection requirements were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and assigned OMB control number 2050-0066. The Agency estimated the total annual burden on the regulated community of local governments to be 22,898 hours. The Agency estimated the reporting or disclosure burden on local government entities to be 1,322 hours and the total recordkeeping burden to be 21,576 hours. The average total burden for reporting or disclosure was estimated to be 2 hours, and the average burden to maintain records of self-insurance was estimated to be 1 hour. These burden estimates included all aspects of the collection effort and including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information.

If you wish to submit comments regarding any aspect of the collection of information contained in today's rule, including suggestions for reducing the burden, or if you would like a copy of the information collection request prepared for this proposed rule (please reference ICR #1359), contact Rick Westland, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202-382-2745); and Marcus Peacock, Office of Management and Budget, Washington, DC 20503.

VI. Supporting Documents

In addition to supporting material found in the rulemaking docket, EPA has prepared the following supporting documents to support this proposed rule:

EPA, "Background Document in Support of Proposed Financial Self-Test for Local Governments Subject to the Financial Responsibility Requirements of Subtitle I of the Resource Conservation and Recovery Act," U.S. Environmental Protection Agency, Office of Underground Storage Tanks, (in progress).

EPA, "Economic Impact Analysis for the Local Government Self-Test Rule for Demonstrating Financial Responsibility for Underground Storage Tanks," U.S. Environmental Protection Agency, Office of Underground Storage Tanks, (in progress).

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: June 4, 1990.

F. Henry Habicht,
Acting Administrator.

For the reasons set out in the preamble, part 280 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(e), 6991(f), and 6991(h).

2. Section 280.92 is amended by redesignating paragraph (o) as paragraph (r), redesignating paragraph (n) as paragraph (q), redesignating paragraphs (g) through (m) as paragraphs (i) through (o), redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and by adding new paragraphs (c), (h), and (p) to read as follows:

§ 280.92 Definition of terms.

(c) *Chief Financial Officer*, in the case of local government owners and operators, means the individual with the overall authority and responsibility for

the collection, disbursement, and use of funds by the local government.

(h) *Local government* shall have the meaning given this term by applicable state law. The term is generally intended to include (1) counties, municipalities, townships, separately chartered and operated special districts, and independent school districts authorized as governmental bodies by state charter or constitution and (2) special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(p) *Substantial governmental relationship* means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

3. Section 280.94 is amended by revising paragraphs (a) and (b) to read as follows:

§ 280.94 Allowable mechanisms and combinations of mechanisms.

(a) Subject to the limitations of paragraphs (b) and (c) of this section:

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in §§ 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more underground storage tanks; and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in §§ 280.104 through 280.107 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee under § 280.96 or surety bond under § 280.98 to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond

executed as described in this section is a legally valid and enforceable obligation in that state.

4. The following sections are redesignated according to the following table:

Old No.	New section No.
§ 280.104	§ 280.108
§ 280.105	§ 280.109
§ 280.106	§ 280.110
§ 280.107	§ 280.111
§ 280.108	§ 280.112
§ 280.109	§ 280.113
§ 280.110	§ 280.114
§ 280.111	§ 280.115
§ 280.112	§ 280.116

5. Newly designated §§ 280.109, 280.110, 280.111, 280.112, 280.114, and 280.115 are revised to read as follows:

§ 280.109 Cancellation or nonrenewal by a provider of financial assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with § 280.107(b).

§ 280.110 Reporting by owner or operator.

(a) An owner or operator must submit the appropriate forms listed in § 280.111(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under § 280.53 or § 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by § 280.95(g) and § 280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under § 280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in § 280.111(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066)

§ 280.111 Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under § 280.113. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be

made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.100 or § 280.102 or §§ 280.104 through 280.107 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under § 280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test must maintain a dated copy of the bond rating certification signed by a representative from the bond rating company.

(6) A local government owner or operator using the local government guarantee supported by the bond rating test must maintain a dated copy of the guarantor's bond rating certification signed by a representative from the bond rating agency.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under § 280.101(d).

(9) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the

relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of subpart H of 40 CFR part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 CFR part 280 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066)

§ 280.112 Drawing on financial assurance mechanisms.

(a) Except as specified in paragraph (d) of this section, the Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to subparts E or F of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2) (i) or (ii) of this section are satisfied.

(b) The Director of the implementing agency may draw on a standby trust fund when:

(1) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 CFR part 280, subpart F; or

(2) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator
Attorney for Owner or Operator
(Notary) Date

[Signatures]

Claimant(s)
Attorney(s) for Claimant(s)
(Notary) Date

or:

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under § 280.106(e), the local government guarantee without standby trust, shall make payments as directed

by the Director under the circumstances described in § 280.112 (a), (b), and (c).

§ 280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under title 9 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under title 9 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate

coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

§ 280.115 Replenishment of guarantees, letters of credit, or surety bonds.

If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, local government guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required, or

(b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(c) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

6. New § 280.104 is added to read as follows:

§ 280.104 Local government bond rating test.

(a) A local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of § 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard and Poor's rating of AAA, AA, A, or BBB.

(b) The local government owner or operator and/or guarantor must maintain a dated copy of the bond rating certification signed by a representative from the bond rating agency.

(c) To demonstrate that it meets the local government bond rating test, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be

replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert either: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date	Maturity date	Outstanding amount	Bond rating	Rating agency
				[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount] exceeds the minimum amount of \$1 million. All general obligation bonds with ratings have ratings that are at least investment grade (Moody's Baa or Standard & Poor's BBB).

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 280.104(c) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(d) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Director finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of § 280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(e) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test

requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

7. New § 280.105 is added to read as follows:

§ 280.105 Local government financial test.

(a)(1) A local government owner or operator may satisfy the requirements of § 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges.

(2) To pass the local government financial test, the owner or operator must meet the criteria of paragraphs (b)(2) and (b)(3) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(i) **Total Revenues.** Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(ii) **Total Expenditures.** Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers) and

all payments for the retirement of debt principal.

(iii) *Local Revenues*. Consists of total revenues (as defined in paragraph (b)(1)(i) of this section) minus the sum of all transfers from other governmental entities, including all monies received from Federal, state, or local government sources.

(iv) *Debt Service*. Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) *Current Expenditures*. Consists of the sum of total expenditures in paragraph (b)(1)(ii) of this section and payments for retirement of debt principal payments minus all capital expenditures.

(vi) *Total Funds*. Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other nonsecurity assets.

(vii) *Population* of the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in paragraph (c) of this section.

(c) To demonstrate that it meets the financial test under paragraph (b) of this section, the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government self-test to demonstrate financial responsibility for [insert either: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert either: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirements.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year.

Worksheet for Municipal Financial Self-Test

Part I: Basic Information

1. Total Revenues.
 - a. Revenues _____
 - b. Subtract interfund transfers _____
 - c. Total Revenues (thousands) _____
2. Total Expenditures.
 - a. Expenditures _____
 - b. Subtract interfund transfers _____
 - c. Subtract any debt retirement included in expenditures _____
 - d. Total Expenditures (thousands) _____
3. Local Revenues.
 - a. Total Revenues (from 1c) _____
 - b. Subtract total intergovernmental transfers _____
 - c. Local Revenues (thousands) _____
4. Debt Service.
 - a. Interest and fiscal charges _____
 - b. Add debt retirement _____
 - c. Add other long term debt _____
 - d. Total Debt Service (thousands) _____
5. Current Expenditures.
 - a. Total Expenditures (from 2d) _____
 - b. Add debt retirement if subtracted in line 2c or not included in total expenditures _____
 - c. Subtract capital outlays _____
 - d. Current Expenditures (thousands) _____
6. Total Funds (thousands).
7. Population.

PART II: Application of test

8. Total Revenues to Population.

- a. Total Revenues (from 1c) _____
- b. Population (from 7) _____
- c. Divide 8a by 8b _____
- d. Subtract 0.312 _____
- e. Divide by 5.05 _____
- f. Multiply by 1.32 _____
9. Total Expenses to Population.
- a. Total Expenses (from 1d) _____

- b. Population (from 7) _____
- c. Divide 9a by 9b _____
- d. Subtract 0.308 _____
- e. Divide by 4.38 _____
- f. Multiply by 1.32 _____

10. Local Revenues to Total Current Expenses.

- a. Local Revenues (from 3c) _____
- b. Total Current Expenses (from 5d) _____

- c. Divide 10a by 10b _____
- d. Subtract 0.911 _____
- e. Divide by 0.899 _____
- f. Multiply by 1.73 _____

11. Debt Service to Population.

- a. Debt Service (from 4d) _____
- b. Population (from 7) _____
- c. Divide 11a by 11b _____
- d. Subtract 0.0245 _____
- e. Divide by 0.313 _____
- f. Multiply by -1.32 _____
12. Debt Service to Total Revenues
- a. Debt Service (from 4d) _____
- b. Total Revenues (from 1c) _____

- c. Divide 12a by 12b _____
- d. Subtract 0.0638 _____
- e. Divide by 0.867 _____
- f. Multiply by -6.78 _____
13. Total Revenues to Total Expenses.
- a. Total Revenues (from 1c) _____

b. Total Expenses (from 2d)

- c. Divide 13a by 13b _____
- d. Subtract 1.19 _____
- e. Divide by 1.32 _____
- f. Multiply by 1.39 _____
14. Funds Balance to Total Revenues.
- a. Total Funds (from 6) _____
- b. Total Revenues (from 1c) _____

- c. Divide 14a by 14b _____
- d. Subtract 0.802 _____
- e. Divide by 3.28 _____
- f. Multiply by 2.43 _____
15. Funds Balance to Total Expenses.
- a. Total Funds (from 6) _____
- b. Total Expenses (from 2d) _____

- c. Divide 15a by 15b _____
- d. Subtract 1.04 _____
- e. Divide by 4.78 _____
- f. Multiply by 2.43 _____
16. Total Funds to Population.
- a. Total Funds (from 6) _____
- b. Population (from 2d) _____
- c. Divide 16a by 16b _____
- d. Subtract 0.159 _____
- e. Divide by 3.49 _____
- f. Multiply by 3.27 _____

17. Add 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 16f + 1.7541

I hereby certify that the financial self-test index shown on line 17 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 40 CFR 280.105(c) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator. If the Director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of § 280.105 (b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Director of the implementing agency that it no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

8. New § 280.106 is added to read as follows:

§ 280.106 Local government guarantee.

(a) A local government owner or operator may satisfy the requirements of § 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be the state in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) Demonstrate that it meets the bonding test requirement of § 280.104 and

deliver a copy of the chief financial officer's letter as contained in § 280.104(c) to the local government owner or operator; or

(2) Demonstrate that it meets the worksheet test requirements of § 280.105 and deliver a copy of the chief financial officer's letter as contained in § 280.105(c) to the local government owner or operator.

(b) If the local government guarantor is unable to qualify for self insurance under either of §§ 280.104 or 280.105 at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in § 280.114(c).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Director of the implementing agency, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Director of the implementing agency for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a state, the local government guarantee with standby trust must be worded as specified in example I of this paragraph, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust must be worded as specified in example II of this paragraph, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

I. Local Government Guarantee With Standby Trust Made By a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all

third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.112 to satisfy such judgment(s), award(s), or settlement

agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 9 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

II. Local Government Guarantee With Standby Trust Made By a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state

implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR 280.104 or the local government financial test requirements of 40 CFR 280.105].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director] of the implementing agency has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ("sudden" and/or "nonsudden") accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount to in settlement of a claim arising from or alleged to arise from such injury or damage,

the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the self-insurance mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 9 (Bankruptcy) U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.1(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]
 [Name of person signing]
 [Title of person signing]
 Signature of witness or notary:

(e) If the guarantor is a state, the local government guarantee without standby trust must be worded as specified in example I of this paragraph, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust must be worded as specified in example II of this paragraph, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

I. Local Government Guarantee Without Standby Trust Made by a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.
 (2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for

releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 9 [Bankruptcy], U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other

than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]
 [Authorized signature for guarantor]
 [Name of person signing]
 [Title of person signing]
 Signature of witness or notary:

II. Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR 280.104 or the local government financial test requirements of 40 CFR 280.105].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has

occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the self-insurance mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 9 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above,

notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

9. New § 280.107 is added to read as follows:

§ 280.107 Local government fund.

A local government owner or operator may satisfy the requirements of § 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for ten times the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than ten times the amount of coverage required under § 280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-tenth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

TF—CF

Y

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and:

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

[FR Doc. 90-13547 Filed 6-15-90; 8:45 am]

BILLING CODE 6560-50-M

United States Federal Register

**Monday
June 18, 1990**

Part III

Department of Housing and Urban Development

**Office of the Assistant Secretary for
Public and Indian Housing**

**24 CFR Part 905 Indian Housing: Revised
Consolidated Program Regulations;
Interim Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-90-1371; FR-2208]

RIN 2577-AA32

Indian Housing; Revised Consolidated Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule consolidates in part 905 most regulations from chapter IX of HUD's rules (title 24 of the Code of Federal Regulations) that govern the operations and management of programs administered by Indian Housing Authorities (IHAs), based on a proposed rule published on June 29, 1988 (53 FR 24554). It also includes changes to rules governing the public and Indian housing programs, generally, that have been made effective in rulemakings published during the intervening period. Principal among the intervening rules are the Indian Housing Act Amendments interim rule published on September 26, 1988 (53 FR 37494), and the Self-Help Development interim rule published on September 26, 1988 (53 FR 37503). Those rules dealt with eligibility for the Mutual Help Homeownership Opportunity program and with a new component of that program for homebuyers who perform labor on their homes, called the Self Help program, and they were issued pursuant to the Indian Housing Act of 1988.

DATES: Effective date: October 1, 1990.
Comments due date: August 17, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number). Only public comments of six or fewer total pages will be accepted via the FAX

transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, room 4232, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708-1015 (voice), or (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements in this rule have been approved by OMB for the following provisions, many of which are identical to existing provisions, under the Paperwork Reduction Act of 1980. The sections containing information collection requirements and their respective OMB approval numbers are listed as follows:

Section	OMB approval Nos.
905.126(e).....	2577-0030
905.135(e)&(f).....	2577-0130
905.135(g).....	2577-0130
905.140(h)&(i).....	2577-0115
905.160(a)(3).....	2577-0039
905.160(a)(4).....	2577-0130
905.170(a)&.....	2577-0130
905.640(d).....	2577-0130
905.165.....	2577-0076
905.175.....	2577-0076
905.225.....	2577-0032
905.240.....	2577-0031
905.245.....	2577-0008
905.260(f).....	2577-0021
905.255.....	2577-0101
905.265.....	2577-0114
905.275.....	2577-0033
905.301(a)(3).....	2577-0063
905.301(d)(2).....	2577-0063
905.305(e).....	2577-0105
905.340(d).....	2577-0114
905.360.....	2577-0130
905.422(a)(2).....	2577-0130
905.425(b).....	2577-0114
905.446(f).....	2577-0130
905.452(a).....	2577-0130
905.455.....	2577-0130
905.458.....	2577-0130
905.468.....	2577-0130
905.469.....	2577-0112
905.460(b).....	2577-0112
905.472.....	2577-0112
905.475.....	2577-0130
905.503(d).....	2577-0130
905.505(c).....	2577-0130
905.517(h).....	2577-0130
905.529(a)(2).....	2577-0130
905.610(c).....	2577-0044
905.655.....	2577-0047
905.610(b).....	2577-0048
905.620.....	2577-0048

Section	OMB approval Nos.
905.625.....	2577-0048
905.610(j).....	2577-0065
905.640(b).....	2577-0015
905.640(e)-(h).....	2577-0039
905.640(i).....	2577-0049
905.650.....	2577-0049
905.665.....	2577-0049
905.645.....	2577-0104
905.670.....	2577-0024
905.715(a)&(c).....	2577-0029
905.730(c).....	2577-0029
905.720.....	2577-0029
905.730(a).....	2577-0029
905.725(e)&(f).....	2577-0029
905.730(b).....	2577-0029
905.745.....	2577-0026
905.755.....	2577-0026
905.770.....	2577-0066
905.903(a).....	2577-0130
905.931.....	2577-0075
905.937.....	2577-0075

Information on the estimated public reporting burden is provided under the Preamble heading Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the HUD Rules Docket Clerk at the address stated above; and to the Paperwork Reduction Project (2577-xxxx), Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. Please include the respective OMB control number listed above in parenthesis for the particular paperwork requirement on which you are commenting.

II. Background

This comprehensive rule consolidates into one part in the Code of Federal Regulations the major statutory and regulatory requirements applicable to Indian housing, in response to demands of Indian leaders and in furtherance of the Indian Housing Act of 1988. Before the creation of this rule, part 905 covered some matters applicable solely to Indian housing, but Indian housing was also governed by the Department's requirements found throughout chapter IX of title 24. Most of the requirements concerning operations, particularly of rental projects, were to be found in parts 912, 913, 960, 965, 968, 969, 970, and 990. Now, those requirements, as well as the basic contracting requirements of part 85, are found in the revised part 905.

Enactment of the Indian Housing Act of 1988 (Pub. L. 100-358, 102 Stat. 676) underscored the need for this separate comprehensive rule applicable to Indian housing. The Indian Housing Act of 1988 created a separate title II of the United States Housing Act of 1937 (42 U.S.C. 1437aa) applicable to Indian housing

and provided that changes to the existing title would not automatically apply to Indian housing. It also provided that the Indian housing program is to be administered in accordance with regulations issued under notice and comment rulemaking procedures, in consultation with Indian housing authorities.

Among the topics covered in the new part 905 that are not contained in the old part 905 are regulations concerning occupancy, financial management, utilities, demolition/disposition, and modernization. The regulations affecting Indian housing that have not been consolidated in part 905 are those found in title 24 CFR chapters I, VII and XII, and in part 961 (grants for drug elimination in public and Indian housing programs).

II. Reason for Interim Rule

Although this rule was preceded by a proposed rule on which there was public comment, this rule includes changes based on other intervening rules as well. Among the rules incorporated in this rule is part 85, which governs procurement of goods and services by recipients of Federal grants, including Indian Housing Authorities (IHAs). Since that rule requires that a Federal agency should not impose restrictions on the contracting process unless a grantee has performed poorly enough to be judged "high risk", the approach of the proposed rule to relieve only IHAs determined to have superior administrative capability of requirements for prior HUD approval has been revised in this rule. See § 905.135. Another change made as a result of evaluating part 85's impact on Indian housing is to create a new subpart B dealing with procurement, including the subject of Indian preference.

The Department believes that it may be useful to obtain public comment on these changes, although it would be contrary to the public interest to delay any further the effectiveness of this rule as a whole. Consequently, the rulemaking project moves ahead to become an effective rule, although comment is solicited on these portions of the rule that are significantly different from the proposed rule.

IV. Changes Made in the Rule

Public Comments—General

One of the public comments was that a second comment period should be offered on this rule before it is made final, because it is so comprehensive, and because the next version will incorporate the contents of rules that

were pending when the proposed rule was being developed—which have not received scrutiny by IHAs with respect to their particular concerns. In effect, this commenter seeks another proposed rule.

Because of the length of this rule, any publication of it is likely to take place a considerable length after the previous publication, and thereby require the inclusion of intervening changes. Therefore, the Department believes that intervening changes are an insufficient basis for republication as a proposed rule.

However, this rule does include some major reformulations of procurement provisions that are applicable to IHAs by way of 24 CFR part 85, and the Department has determined that seeking comment on these provisions is advantageous. Consequently, the entire rule is being issued as an interim rule, on which public comment is sought, but the rule will take effect in this form in order to make effective provisions that are ostensibly already effective but may not have been properly understood in the context of Indian preference without this reformulation.

The use of the phrase "HUD requirements" as the standard for IHA compliance was the subject of challenge by one commenter. The substitute phrase suggested by the commenter was "HUD regulations and contracts". The basis for the objection was that "requirements" imposed by methods short of contract or rulemaking subject to public procedure are not authorized by law, and that imposing penalties for failure to comply with HUD handbook provisions or with field office memoranda leads to disputes between IHAs and HUD field offices and to inconsistent interpretations of the contracts and regulations.

The Department certainly wants to avoid disputes between IHAs and HUD field offices and inconsistent interpretations of the contracts and regulations. To the extent possible, the objectionable phrase has been replaced with more specific reference to the regulations and contracts. However, there are occasional situations where specific procedures for complying with regulatory or contractual requirements are stated in HUD handbooks and where a reference to a HUD handbook is made in this rule. We hope that the changes satisfy the concerns of the commenter.

A third general comment was that the Model Tribal Ordinance should be restored to provide accessibility, simplicity, and efficiency. The Department plans to include the Model Tribal Ordinance in the Indian Housing

Management handbook, to be published after completion of this rulemaking. Inclusion of the ordinance in the regulations would require rulemaking to change its content in the future and resulting inflexibility. Moreover, since any IHA generally needs to refer to the model ordinance once, at its creation, it is unnecessary to include this somewhat lengthy document in the regulation.

Subpart A—General

Applicability and Scope (§ 905.101)

The comment was made that the statement in this section that this part is a complete statement of HUD regulations governing the development and operation of Indian housing, except as supplemented by other parts in other chapters of title 24, should indicate that all of these other parts are, in fact, cross-referenced in this part. We believe that this section so states.

Definitions (§ 905.102)

The definition of "adjusted income" was modified in the interim rule published on September 26, 1988 to implement the Indian Housing Act of 1988. The change was to permit the deduction of excessive travel expenses (up to \$25 per week), if that amount were greater than a family's child care expenses. Commenters objected to being limited to one or the other of these deductions. The excessive travel expense deduction was added by the Act, and the statutory language framed the deduction in terms of an alternative to the child care expense deduction. HUD does not have the discretion to combine the deductions. There were also public comments on that rule urging HUD to calculate its "adjusted income" based on the amount actually received by a family, instead of basing it on a gross income minus certain deductions. Congress has expressly adopted the approach of allowing certain specified deductions from gross income in its formulation of the income-based rents and homebuyer payments. Since the definition of adjusted income is specified by statute, HUD is not free to make this type of change without a legislative amendment.

Two practical issues concerning implementation of income computation were raised in response to that interim rule. Both related to the reliability of predicting income: predictions based on the previous year's income might be unreliable in an economy based on an erratic industry such as the timber industry; and reporting of increases of income should be delayed to allow a "grace period" before new higher rents

are to be charged. If a family's income is very erratic, it is possible that it should not participate in a homeownership program, where families must meet certain fixed expenses, but should be converted to a rental program. An IHA is free to base its estimate of the next year's income on the best information available to it, and to permit interim reexaminations of income to be used to decrease the payments due, as appropriate. The annual reexamination does often act to provide a "grace period", at least where an IHA does not require interim reexaminations for every increase in income. Again, much discretion is left to IBAs in these matters.

The definition of an "approved certifying organization" was taken from a rule generally applicable to all lower income housing programs, and it did not include any reference to Indian preference regulations. Commenters indicated that it should. (The Indian preference provisions apply not to HUD procurement or approval of an organization but to an IHA's procurement.) We believe that the definition is not the place to make any specific reference to Indian preference. However, § 905.140, which deals with the subject of HUD approval of certifying organizations does allude to familiarity with Indian preference procedures as a criterion on which an organization applying to be approved as a certifying organization would be judged.

The definition of "common property" did not include reference to common areas in a cooperative, a form of ownership specifically authorized by the Indian Housing Act of 1988. At the suggestion of a commenter and to conform to the change made by the 1988 Act, this change has been made.

A commenter urged that an "elderly person" be defined as a person 55 years of age or older (the age recognized by the BIA), since the average life expectancy of the American Indian is much less than the national average. The definition in this rule follows the definition prescribed in section 3 of the 1937 Act, which is 62 years of age or older. A change for the purposes of the Indian housing program would require legislative change.

The definition of "force account labor" did not include reference to a piece work basis of employment, and one commenter suggested that it be changed to permit piece work based on nationally accepted standards identifying the amount of time required for completion of various tasks. It would permit individuals to perform work in a

manner similar to a subcontractor, but without the overhead. After a thorough investigation, the Department has concluded that this method of employment is not permissible within current Federal labor laws (Davis-Bacon Act).

"HUD" should be defined to mean the HUD Office of Indian Programs field office unless otherwise stated, commenters advocated, because submission of materials to HUD Headquarters causes undue delays. The term "HUD" is used in many ways in this rule. For example, a contract described as being between HUD and an IHA is not merely a contract between the office of Indian Programs field office and the IHA. Therefore, we have not adopted this suggestion.

However, in many places the term "HUD" has been expanded to clarify precisely which level of the Department is intended. In some cases the term "HUD Field Office" is used, and it is defined to refer to the appropriate HUD Office of Indian Programs. In other cases, the Assistant Secretary for Public and Indian Housing is referenced, where the intent is to have HUD Headquarters involved.

The definition of "Indian area" was modified to reflect the definition stated in the 1988 Act, as suggested by a commenter.

Definitions related to operating subsidy calculations referred to PHAs, not IHAs. They have been revised to refer to IHAs or the general term "housing authorities", where appropriate. The definition for "formula" will still reference housing authorities because there were no Indian Housing Authorities in the original sample group on whose data the formula was based.

The definition of "Net family assets" should exclude Individual Indian Monies held in trust with the Bureau of Indian Affairs, a commenter suggested, because it is not cost-effective to obtain and verify information about these small amounts of money. Also, the reference to income from trust funds should be deleted because if there is a distribution it would be excluded as "sporadic" income.

The Department agrees that Individual Indian Monies held in trust with the BIA should be treated the same as other trust funds in irrevocable trusts: They are excluded from the calculation of net family assets. Clarifying language to that effect has been added. The reference to income from a trust fund has been deleted, so that they will be treated the same as other possible

"income". If the income payments are sporadic and unpredictable they will be excluded, but if they are regular and predictable, they will be included.

We note that this definition, as other definitions relating to income, follow the same language as those applicable to most of HUD's assisted housing programs (under both the United States Housing Act of 1937 and certain provisions of the National Housing Act). Changes in these definitions require consultation with the Department of Agriculture, in accordance with statutory directive, since that agency is required to follow HUD's definition of income (and related definitions). Therefore, any significant change to these definitions would require concerted action.

The definition of "shared housing" is not found in the rule text, although the preamble to the proposed rule indicated it was there. The Department has implemented rules for shared housing arrangements in some components of the Section 8 Housing Assistance Payments program, but not in the public housing program. At the time the proposed rule was first under development, a proposed rule providing for shared housing in the public housing program had been developed, but it was later abandoned as unnecessary. Since Indian housing generally follows the public housing model rather than the Section 8 program model, there is no reason to add the definition to this rule.

Types of Lower Income Housing Projects (§ 905.105)

In the rental program, leases should be month-to-month from the beginning, instead of initially for one year, because a family may need the unit for a period of less than a year. We agree with the commenter that an IHA should be able to set an initial lease term of less than one year when it is appropriate. This section has been modified to permit a shorter initial lease term.

Assistance From IHS and BIA (§ 905.110)

This rule should require that IHS and BIA respond to IHAs within 30 days and that HUD be the lead agency when BIA action is necessary. Although HUD is sympathetic to the frustrations of IHAs with delays, the Department cannot agree that this rule can control their actions. However, HUD, IHS, and BIA will explore more specific processing time requirements through revisions of the Interdepartmental Agreement.

Applicability of Civil Rights Statutes (§ 905.113 of Proposed; § 905.115 of Interim Rule)

Commenters contended that this section is misleading, since it fails to recognize that States and Tribes may have their own civil rights acts that may apply to actions of an IHA. It should not try to predict what laws apply, but should acknowledge the types of civil rights laws and recommend that each IHA consult its own legal counsel to determine the applicable laws.

Contrary to the commenter's statement, Federal Civil Rights laws, including the Indian Civil Rights Act, take precedence over Tribal or State laws. Therefore, we have made no change in this section.

The argument was raised by several commenters that preference in admission for Indians should not be viewed as a racial preference, but a political preference for members of the Tribe—citizens of their governments. The political status of Federally recognized Tribes is accorded by the Bureau of Indian Affairs of the Department of the Interior. The statutory authority for the HUD Indian Housing program does not direct assistance to Indians on the basis of a political (trust) relationship with the government (as in the case of BIA programs) but on the basis of the low income status of families. Hence, the statutory authority for the program does not support the use of a political preference. In any event, it is still true that Federal laws do take precedence and that each IHA should consult its own legal counsel about the applicability of various civil rights laws.

Indian Preference in Employment and Contracting (§ 905.120 of Proposed; § 905.165 of Interim Rule)

This section should be redrafted to include required compliance with applicable Tribal preference laws applicable to contracting and employment, to the extent that such laws are not inconsistent with Federal law. The Department concludes that it is not possible to include a general statement that requires compliance with Tribal preference laws. Applicability of each Tribe's preference provisions require HUD review to determine how they interact with Federal requirements.

What does it mean to give preference in training and employment opportunities to Indians, as required by the clause required to be included in each contract and subcontract by section 7(b) of the Indian Self-Determination and Education Assistance Act? There is a chart for procurement activities but not for

training and employment activities. Does the issue arise only when the Indian and non-Indian applicants are equally qualified?

The revised rule provides answers to these questions in several places. Section 165(b)(2) describes preference in training and employment with respect to IHAs, and § 905.180(c) describes it with respect to contractors. With respect to the latter, basically, preference is to be given in any "new hires" to qualified Indians.

Compliance With Other Federal Requirements (§ 905.125 of Proposed; § 905.120 of Interim Rule)

Flood Insurance. With respect to flood insurance, the term "community" needs to be explained. Most Tribes have not enacted flood elevation restrictions required for participation in the National Flood Insurance program, and using county or township flood hazard maps presents problems of Tribal sovereignty over trust lands. The Department has added a definition, which makes it clear that if the land is Indian trust land, the entity with authority over it must have taken the required action.

Wage Rates. A commenter stated that an IHA should be able to pay wages for laborers and mechanics at a local wage scale established by the Tribe, in recognition of sovereignty of Indian Tribes, instead of paying the Davis-Bacon wage rate, for which a wage determination must be solicited from the Department of Labor. In support of this position, the commenter said that Davis-Bacon wage rates in the North Slope of Alaska applied to ongoing maintenance work will make costs in the villages prohibitively high.

The Department is required by section 12 of the United States Housing Act of 1937 ("1937 Act") to mandate payment of Davis-Bacon wage rates on all "development" activities, which include construction and rehabilitation, and to mandate payment of wage rates determined or adopted (after a determination under State, Tribal or local law) by HUD on all maintenance (including nonroutine maintenance activities). (See § 905.120(c)(2).) However, HUD may consider information on local prevailing wage rates provided by the IHA or Tribe when HUD determines the wage rates for maintenance operations.

An IHA urged HUD to allow Davis-Bacon wage rates to be waived for projects of 25 or fewer units and define the locality where the local rate may be established as the Tribal service area or jurisdiction. Section 12 of the 1937 Act provides an exception for projects of fewer than 9 units in section 8 projects,

but contains no other exceptions. A legislative amendment would be needed for HUD to have authority to establish a 25 unit threshold in the regulation. The relevant locality for Davis-Bacon purposes is established by the U.S. Department of Labor rather than HUD.

An IHA urged HUD to allow the IHA to make the determination of prevailing local wages for professional and technical services, without any HUD approval, in recognition of the sovereign powers of Tribes; or, at a minimum, include Tribal law as one of the laws considered by HUD in making its determination. Section 12 of the 1937 Act requires that the determination of wages prevailing in the locality be made by the Secretary, or alternatively, that the Secretary may adopt a wage rate after a determination of a prevailing rate under applicable State, Tribal or local law. The Secretary does not have the authority to delegate the responsibility to determine professional and technical wage rates, although the Secretary may consider information about local rates supplied by the IHA. If there is a Tribal law providing for prevailing wage rates to be determined for professional and technical services and such determinations have been made, the Secretary may in his discretion adopt the determinations already made under the Tribal law. However, the Secretary's determination is to be based on "applicable State or local law", which in the case of Indian housing includes Tribal law. Consequently, the Secretary may be guided by any determinations already made by a Tribe about local wage rates.

Environmental Role of Tribes. Commenters urged that HUD allow the Tribe to perform the environmental clearance, since it is extremely aware of archeological and conservation concerns. This rule is not the controlling regulation on the subject of whether tribes can assume these functions. The rules that are controlling do not permit the responsibility to be transferred to another entity by the responsible Federal agency, although they do anticipate the participation of Indian tribes in decisions affecting Indian lands.

Part 800 of title 36 of the Code of Federal Regulations refers to participation in the Historic Preservation process by Indian Tribes. Section 800.1(c)(2)(iii) states that,

An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs,

and the [Advisory Council on Historic Preservation] finds that the Indian tribe's procedures meet the purposes of these regulations.

However, even in the case where the tribe acts as the State Historic Preservation Officer, the Federal agency involved is still required by the National Historic Preservation Act (and §§ 800.1 (a) and (c)(1)(i)) to be responsible for taking into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places, to afford the Advisory Council a reasonable opportunity to comment on the undertaking, and to minimize harm to any National Historic Landmark.

Similarly, in accordance with the National Environmental Policy Act of 1969 ("NEPA") and implementing Executive Orders and Council of Environmental Quality regulations (40 CFR parts 1500-1508), HUD has responsibility for preparing the environmental assessment. Consultation with the applicant and governmental agencies, including Indian tribes, is to take place during this process, but HUD as the Federal agency involved is responsible for making the environmental determinations. (See 40 CFR 1501.2 and 1506.5.)

Frequency of Audit. The requirement that audits be performed annually was criticized as burdensome. IHAs indicated a preference for audits to be performed once every two years. The Single Audit Act, as implemented by 24 CFR part 44, requires that all housing authorities have annual audits except for those with Federal funding under \$25,000. Therefore, HUD cannot change this requirement.

Establishment of IHAs Pursuant to State Law (§ 905.130 of Proposed; § 905.125 of Interim Rule)

The rule should reflect that State chartering of an IHA to operate within Tribal lands must be consistent with applicable Tribal law and cannot be in violation of any Tribal ordinance or resolution that would otherwise prohibit a State-chartered entity within Tribal lands. The creation of IHAs under State law or Tribal law must conform with the requirements under the Act and HUD regulations. The jurisdiction of State-created IHAs to operate on Tribal lands must be determined on an individual basis because there are varied types of land and differing legal jurisdictions involved.

Establishment of IHAs by Tribal Ordinance (§ 905.135 of Proposed; § 905.126 of Interim)

This section requires that an IHA submit evidence that its ordinance establishing the IHA either has been approved by the Department of the Interior or has been reviewed and not objected to by that agency. A commenter said that HUD lacks the legal authority to require approval of this Tribal ordinance by the Department of the Interior (citing *Kerr McGee Corp. v. Navajo Tribe*, 471 U.S. 195 (1985)).

The case cited dealt with whether in the absence of a desire by the Department of the Interior to review Tribal laws taxing mineral production where the Department had the authority to regulate mineral leasing. The court decided that the Department need not review each such ordinance if it did not want to. Here the question is whether HUD, as an agency granting Federal assistance to housing authorities can insist that an applicant for assistance submit its enabling legislation to another Federal agency for review (where that agency is not unwilling to perform the function).

HUD does have the authority to insist that its grantees be organized in a way that assures that they have all powers necessary to carry out the responsibilities mandated by the 1937 Act. It is for that reason that HUD insists on use of a particular form of ordinance, or the right to approve any variation from that form.

IHA Commissioners (§ 905.140 of Proposed; § 905.130 of Interim Rule)

This section permits an IHA commissioner to be eligible for employment by the IHA under unusual circumstances, where the need is documented and the employment is approved by HUD. A commenter objected to ever permitting such employment.

The Department believes that a total prohibition on employment of an IHA commissioner by an IHA would be too limiting. Although the practice should be limited to extremely unusual circumstances, as now provided in the interim rule, there may be occasions when the IHA and local community may need this flexibility.

Administrative Capability (§ 905.145 of Proposed; § 905.135 of Interim Rule)

Commenters stated that this section of the proposed rule did not reflect the consensus reached between the Secretary's Committee for Native American and Indian Housing, the National American Indian Housing

Council, and HUD officials in Phoenix in 1988. A right of appeal should be added; a need for new housing should be given a higher priority than the Administrative Capability Assessment (ACA) score in awarding funding; numerical scores for the ACA should not be included in the rule, or else criteria for determining the score should be stated; and an IHA should be treated as satisfying the 70 percent score if it is expected to reach it within a reasonable period of time.

The Department agrees that this section needed substantial revision. It has been re-designed to incorporate the Housing and Community Development Act of 1987 changes, the consensus reached with members of the Indian housing community, and the provisions of part 85. As requested, rights of appeal for sanctions related to funding have been added and references to ACA scores have been deleted. In addition, provisions for the IHA to enter into a management improvement plan to rectify deficiencies, as anticipated by part 85, has been outlined.

Certification of Housing Managers (§ 905.150 of Proposed; § 905.140 of Interim Rule)

Indian organizations should be the approved certifying organizations. There is no statutory basis for restricting certification to Indian organizations, as recommended. However, the Department can judge applicants for "approved certifying organizations" on their knowledge and familiarity with the Indian housing program. Revisions to the section have been to reflect this concern.

Paragraph (c)(4) of this section provides that the standards, criteria, and program for certification of housing managers are "subject to periodic review and reapproval or disapproval not less than annually by the HUD Certification Review Committee." One commenter recommended that the standards should be reviewed biennially, instead, to allow assurance of continuity of training for certifications, while reducing unnecessary reporting and recordkeeping.

The language of the proposed rule allows the Department the flexibility to respond to concerns raised by attendees at the certification courses on a more timely basis. The recommended change would actually require the Department to review the standards, criteria and certification program of each organization every two years whether or not it believes the review is necessary.

Funds for training should be provided outside the Performance Funding System

("PFS") if PFS funding is inadequate. First of all, the amount of operating subsidy to be provided for the Mutual Help program includes training. (See § 905.434(b)(4).) Therefore, this comment seems directed at the rental program. The applicable provisions concerning operating subsidy for the rental program are contained in subpart J. There is no separate provision for funding for training under that subpart, because it bases funding on the previous year's funding as adjusted for recognized changes in costs for the type of IHA involved. The pending rulemaking concerning an appeal system to adjust the expense level computed under the PFS may provide a mechanism for seeking coverage of these expenses.

In keeping with a public comment, paragraph (d) has been clarified to permit employment of housing managers who have probationary certificates (and consequent eligibility of their salaries as allowable expenses under PFS) during the permissible probationary period.

The following chart shows how the provisions of this interim rule correspond to sections of the rule in effect at the date of publication.

Subpart A—General

Interim section	Existing section
905.101 Applicability and Scope.....	905.101
905.102 Definitions.....	905.102
905.105 Types of Lower Income Housing Projects.....	905.103
905.110 Assistance from Indian Health Service and Bureau of Indian Affairs.....	905.104
905.115 Applicability of Civil Rights Statutes.....	905.105
905.120 Compliance With Other Federal Requirements.....	905.107, 968.9
905.125 Establishment of IHAs Pursuant to State Law.....	905.108
905.126 Establishment of IHAs by Tribal Ordinance.....	905.109
905.130 IHA Commissioners Who Are Tenants or Homebuyers.....	905.110
905.135 Administrative Capability.....	(*)
905.140 Certification of Housing Managers.....	967.301-967.309

* And def. secs. of other parts.

° New.

Subpart B—Procurement

The proposed rule contained several sections dealing with procurement matters: § 905.120 concerning Indian preference in employment and contracting, § 905.230 concerning Indian

preference in development contracting, § 905.235 concerning development contracts generally, § 905.350 concerning procurement of goods and services, and § 905.355 concerning contracts for personal services. The preamble to the proposed rule noted that a government-wide regulation had been issued on the topic of procurement, which was codified at 24 CFR part 85 for HUD, and that the proposed rule did not reflect integration of that rule's content. Now that the Department has had the time to consider fully the impact of part 85 on Indian housing, we have decided that all the sections in part 905 that deal with the subject need to be placed in one new subpart, eliminating duplicative discussion and reflecting the government-wide requirements. Consequently, this rule contains a new subpart B on the topic of procurement, which integrates the content of the sections enumerated above. The principal difference from current rules, in addition to the reorganization, is that new procedures have been developed for small purchases.

This new subpart is divided into six sections. The first section discusses procurement standards; it sets forth the Federal requirements that are applicable to procurement and specifies those areas where the IHA is required to develop and implement additional procedures. The second section notes the applicability of Indian preference in the procurement process, cites the eligibility requirements and sets forth the complaint procedure to be followed in the event of disputes. The third section specifies other requirements applicable to development contracts, such as bonding and equal employment opportunity. The fourth section prescribes the situations under which local prevailing wage rates are preempted by a Federal rate. The fifth section outlines the methods of procurement that an IHA or contractor may use; incorporates the approved ways of providing Indian preference; and includes new, relaxed procedures for small purchases. The sixth section discusses the requirements for Indian preference in training and employment. The last section incorporates by reference the administrative requirements of part 85 that are applicable to IHA contracts.

There were a few public comments on provisions that are now contained in this procurement subpart.

With respect to Indian preference, found in § 905.230 of the proposed rule, there were three significant comments. First, IHAs stated that they should be permitted to use tribal preferences or

preferences for hiring contractors from an IHA's jurisdiction. Second, they suggested that HUD should require that each contractor submit references from prior clients regarding comparable projects to assure ability to perform and should permit an IHA to reject a bid if appropriate references are not provided. They also suggested that HUD should maintain a list of contractors that IHAs have found to be satisfactory. Third, IHAs suggested that a sole bid should not be required to be rejected if it meets all the criteria and is within the budget.

In response to the first suggestion regarding tribal and local preferences, the new Federal procurement regulations (24 CFR 85.36(c)(2)) prohibit the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. Therefore, no change has been made in response to this comment. However, locally developed preferences that do not pertain to local residence are permitted, as described in § 905.165(c)(4).

The new procurement regulations also require IHAs as recipients of Federal grants to make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. In selection of a contractor, an IHA is required by 24 CFR 85.36(b)(8) to give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, although HUD does not believe it necessary to specify in this rule that a specific procedure of obtaining references is required. Although HUD does not maintain a list of "acceptable" contractors, there is a list maintained by the General Services Administration of contractors that have been determined by a Federal government agency not to have performed satisfactorily, which is available at HUD field offices, and which is required to be consulted before any contract award.

The requirement that a sole bid be rejected and the solicitation be republished applies to the case where the solicitation is restricted to Indian-owned enterprises and Indian organizations. In that situation, the proposed rule did not require rejection in every case, but did require that acceptance of the bid would take place only under unusual circumstances—unusually favorable price or concern about the effect of delay associated with readvertising.

In the case where a bid solicitation is not restricted to Indian-owned

enterprises and Indian organizations, the rule permitted award to the lowest responsive bid, without reference to response from only one bidder. The Department believes that these provisions of the proposed rule follow the spirit of competition mandated by part 85; and, therefore, the interim rule contains the same provisions, at § 905.175 (c) and (d).

There was an objection to the inclusion in § 905.235 of the proposed rule of a requirement that IHAs develop specific rules for bid protest procedures. IHAs claim that it is too expensive and would unnecessarily restrict the IHA's legal rights. The new procurement regulations applicable to all HUD programs provide that IHAs, as grantees, must have protest procedures to handle and resolve disputes relating to their procurement and must disclose to HUD information whenever a protest is submitted. A protestor must then exhaust all administrative remedies with the IHA before pursuing a protest with HUD. Allowing the IHA to develop its own procurement procedures, including protest procedures, enhances rather than diminishing the IHA's legal rights.

The following chart shows how the sections of this interim rule correspond to sections of the rule in effect on the date of publication:

Subpart B—Procurement

Interim section	Existing section
905.160 Procurement standards	New
905.165 Indian preference	905.204
905.170 Other requirements applicable to development contracts	905.211
905.172 Wage rates	905.211
905.175 Methods of procurement	85.36
905.180 Training and employment requirements	905.204(e)
905.185 Government-wide contract requirements	New

Subpart C—Development

Roles and Responsibilities of Federal Agencies (§ 905.201 of Proposed; § 905.110 of Interim Rule)

A request was made to include the contents of the interdepartmental agreement in these regulations. We agree with the comment and it has been restored as appendix I to subpart C of this rule.

A comment was made that the roles of HUD, BIA, and IHS must be clearly delineated on a reservation-by-reservation basis. Although the roles of these agencies are not delineated in the body of this rule, they are specified in

the interdepartmental agreement. In addition, handbook guidance to the field offices encourages the development of memoranda of agreements among the various entities that affect particular reservations that need to be addressed separately.

A commenter suggested that the definition of "off-site" should be included in the interagency agreement, since it has important consequences for the source of funding for utilities. The recommended definition was, "all property other than the site(s) approved for the construction of dwelling(s) or other project structures." A definition of "off-site" may be adopted among the revisions to the interdepartmental agreement and we will propose consideration of the suggested definition.

Allocation (§ 905.205)

Comments were made that half of the units should be allocated among the regions, and the other half should be allocated on a needs basis. The Congress has specified that HUD must allocate units based on "housing need". Therefore, allocation of units will continue to be made with "need" as a primary consideration. In response to criticism of the data supplied by BIA for determination of "need", HUD is reviewing alternatives to the BIA consolidated housing survey process for determining need. In addition to BIA data, HUD will consider other related data.

Development Priorities (§ 905.210)

Although this section provides for acquisition to be the preferred development method, the regulations do not deal with this method in any great detail. The regulations do provide general guidance. Additional, more detailed direction will be included in a forthcoming Indian Housing Development Handbook.

Objection was expressed to the requirement that there be cooperation agreements with a locality when an IHA acquires units, because the local government can refuse to execute such an agreement, vetoing the acquisition of additional units of Indian housing. Cooperation agreements are required by section 5(e)(2) of the 1937 Act in connection with the development of all housing under that Act.

Production Methods and Requirements (§ 905.215)

A comment was made that it is an intrusion into the financial affairs of a Tribe to require a Tribe to provide security when an IHA uses the force account method of construction. Federal

procurement regulations require security for construction projects funded with Federal funds (24 CFR 85.36(h)). However, this section has been changed to permit the HUD field office to determine whether the security will be provided by the tribe or the IHA. This change accommodates the use of force account by an IHA created under State law.

Given the nature of the Turnkey method, where the IHA only acquires the units after they are completed, a commenter suggested that the requirement for 100 percent performance and payment bonds is unnecessary. As stated above, Federal procurement regulations generally require such security. However, they do state that the Federal agency may determine that its interest is adequately protected under the policy of the grantee (the IHA, in this case). Under this authority, we have revised this section to require the standard 100 percent bonds, *or other security approved by HUD*. "unless otherwise required by State law." The intent of the italicized phrase is to permit a much lower percentage of security, reflecting the generally lower risk of this method of development. The IHA's determination on the type of security to require will be made based on its evaluation of the developer's capacity, experience, and capability. The phrase in quotations has been added so that the IHA will comply with State law on this subject, which is a likely subject of State law.

A suggestion was made to reinstate the recognition of the "Modified Turnkey" method of development. It has been added.

A recommendation was made to eliminate the requirement that advertisements disclose the maximum total contract price. We agree that elimination of this requirement may result in the generation of more competitive and lower bids, and we have eliminated it from paragraph (b).

Application Procedures (§ 905.220)

A commenter objected to the elimination of the existing rule's procedure for an IHA to appeal if HUD disapproves an application or approves fewer units than were proposed in the application from the proposed rule. The reason the appeal was eliminated in the proposed rule was that by the time an IHA expressed its objections to the action and HUD made a decision on the appeal, all of the funding for the fiscal year would be committed to other IHAs. Therefore, there would be no remedy available. The elimination of the reference does not prevent any IHA

from expressing its objections, but it does prevent an IHA from developing false hopes about the availability of additional funding at that point in the selection process. The Department has decided to keep this provision as it was in the proposed rule.

Commenters also suggested that HUD be required to act upon an application within 30 days. The Department has acquiesced to this suggestion.

A recommendation concerning the Total Development Cost ("TDC") standard proposed that a development program should be approvable even though its cost exceeds the amount of the program reservation so long as it is within the TDC standard for the development. The HUD Appropriation Act for 1990 addressed the issue of how the TDC standards for various types of housing are to be established: they are to be based on nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality. Since enactment of that Act, the Department has evaluated the method of determining the appropriate cost of a development and has totally revised this section.

Program reservations and development programs are controlled by the upper limit established by the TDC standard, but the Department does not use the upper limit as the approvable amount for each development. HUD Field Office Directors will determine the appropriate amount for a program reservation, within the TDC standard, by reviewing the cost of actually constructed Indian housing and reserving an amount that is reasonable for the particular development.

The proposed rule contained a provision permitting an IHA to increase the number of units to be developed, within the approved development cost, provided it submitted a justification and evidence that the tribe would provide some form of security acceptable to HUD to cover any excess costs. One commenter objected to the provision dealing with security from the tribe, since some IHAs are created pursuant to State rather than tribal law and have insufficient ties to the tribe to be able to secure such backing. The language of the rule has been abbreviated to require the IHA, in the case of a desire to increase the number of units, to submit to HUD a request to amend the program reservation, including a justification for the increase. The reference to tribal backing has been eliminated.

Several commenters requested an increase in the allowance for planning funds from three percent to five percent. No change has been made in this provision (paragraph (d)), since it

already permits higher amounts to be approved for planning where certain conditions are satisfied.

Since the financing of Indian housing has been converted from a system of two stages of loans to two stages of grants, the proposed rule provided for execution of an ACC at each stage. The comment was made that there should be only one ACC, which would cover the entire amount anticipated to be needed for project development, to be executed at the earlier of the IHA's request for planning funds or upon approval of the development. The suggestion was based on a concern to simplify the program and reduce the paperwork burden, and it was suggested that the HUD field office would be able to judge an IHA's ability to perform and to terminate the ACC for failure to perform adequately.

An ACC executed for the entire amount of the development at the planning stage would encumber the funds specified and creates legal concerns relating to de-obligation of funds in the event the IHA is unable to develop the project. Therefore, the Department has determined that it is best programmatically to execute an ACC in stages: an ACC for planning initially, and an amendment to cover full development of the project after completion of the planning stage.

A request was made that HUD should permit the use of funds from a rental project for the planning of another project. In order to maintain the fiscal integrity of each project, government accounting practices prohibit the commingling of funds. (In the case of staff usually assigned to work on a rental project, part of an employee's time can be separately allocated to the work done on development of a new project.)

Development program (§ 90S.225)

A commenter suggests that IHAs should have a longer time than 12 months to submit a development program and recommends 18 months, two years or 30 months. The Housing and Community Development Act of 1987 prohibits recapture of funds during the 30 months following the date of program reservation. If the IHA is to reach construction start by 30 months, HUD considers 12 months a reasonable period for submission of a development program. However, this section has been modified to indicate that if a development program is not submitted within that period, HUD will contact the IHA to attempt to resolve any problems preventing its submission.

Site Selection Criteria (§ 90S.240 of Proposed; § 90S.230 of Interim)

A comment was made that the reference to "local and/or regional" plans should be deleted, because Tribal plans should always take precedence. The intent of this language is the same as the result intended by the commenter. On Indian reservations, the "applicable" plan will be the tribal plan, but if there is no tribal plan, any local or regional plans will be applicable.

An Alaskan commenter recommended adding a requirement that Mutual Help homes be built only on unrestricted land, so that the IHA can convey title to the land as well as to the building. This recommendation is infeasible since there are many Indian reservations that contain vast holdings of restricted land upon which the tribal members choose to build their homes. The Mutual Help program was designed to respond to the unique needs of Native Americans who occupy Indian reservation "trust land". This commenter also stated that IHAs building on Indian reservations that are under State control should not be required to go through the BIA for leases since it has no control over the land. The language of the paragraph concerning BIA and leases has been clarified to this effect.

There was objection to the limit on a homesite's size to one acre, because larger sites may be required under local law. The Department retains in this rule the provision that a site shall not exceed one acre in size without HUD approval, but has added a concession to Tribal or local policy with respect to the size of homesites on trust land. The cost for each site is to be allocated based on its size relative to the size of the land used for the entire project.

There also was objection to the manner of funding access roads, with a recommendation that they be funded in the same manner as off-site water and sewer facilities. Appropriations acts have provided water and sewer funding through HUD, whereas funding for access roads has been provided through BIA. At this time, the Department is not pursuing any change to the current funding practices.

Appraisals (§ 90S.250 of Proposed; § 90S.240 of Interim Rule)

A comment was made that it is unnecessary and costly in time and money to require appraisals on trust land. We agree that it is difficult to determine the exact value of restricted land and that it is very costly to conduct appraisals for all donated sites on Indian reservations. Therefore, this rule

provides that all trust (restricted) land on Indian reservations will be valued at \$1,500.00, and an appraisal will only be necessary where the value of the land is expected to exceed that amount.

Design Criteria (§ 905.260 of Proposed; § 905.250 of Interim Rule)

The increased flexibility given to IHAs in design matters was applauded. But an IHA suggested that there should be some reference to compliance with national fire protection codes. The rule has been revised to require compliance with model building codes where local Tribal comprehensive codes do not exist, in accordance with the 1988 Act. The provision of this section permitting HUD to disapprove a design if it determined that the project could not be constructed within the allowable project cost limit was criticized because it did not specifically allow an IHA to challenge that determination. Although the rule does not expressly state that an IHA may challenge such a determination, there is no restriction against it.

Total Development Cost (§ 905.265 of Proposed; § 905.255 of Interim)

A recommendation was made that HUD Indian Program field offices be allowed to approve increases of up to five percent above the TDC standard, if circumstances warrant it. The recent enactment of Public Law 101-144, mandated a particular method of calculating the total development cost standard and restricted increases in any particular case over the standard to no more than 10 percent, to be approved by "the Secretary". A recommendation to eliminate the administratively determined cost cap of \$92,000 per unit for Alaska has been resolved by the new system mandated for all TDCs by the recent statute (Pub. L. 101-144).

A California commenter recommended that site acquisition costs should be allowed to be excluded from the TDC limit, although they should still be permitted to be covered by program funds. The new statute requires that all development costs must be considered in any test of compliance with the TDC limits. However, if site acquisition costs cause the TDC to exceed the limit, the Secretary may find that there is good cause for permitting the project cost to exceed the limit.

A commenter on the interim rule implementing amendments made by the Indian Housing Act of 1988, recommended revising § 905.255(g) concerning construction at reasonable cost to include a reference to the cost of long-term operation of the project as well as the cost of construction. We agree that this is an improvement and have included the change in this rule.

Construction and Inspections (§ 905.270 of Proposed; § 905.260 of Interim Rule)

The reduction in HUD oversight of IHAs with superior administrative capability was praised by commenters. However, one request was made that the test for which IHAs qualify for reduced oversight be based on development capability, and one request was made that HUD's presence at the final inspection be eliminated.

This rule incorporates a change from giving reduced oversight to IHAs with "superior administrative capability" to reducing oversight on all IHAs except those determined by HUD to be "high risk". This change reflects the issuance of 24 CFR part 85, which provides for minimal oversight by Federal grant agencies over local government grantees except where there has been such a determination. As requested, development capacity is one of a number of factors used in determining whether an IHA is "high risk", and paragraph (f) has been revised to provide that HUD will decide whether to participate in the final inspection based on the IHA's performance on the development of the project up to that time.

A commenter indicated that an IHA should not be required to issue an interim certificate of completion when punchlist items remain to be finished. This section has been revised to permit but not require issuance of the interim certificate under these circumstances (and where seasonal completion items remain).

One commenter remarked that the 12 month period given for an IHA to move from approval of a development program to construction start is too long, and suggested that it be changed to nine months—with the possibility of an extension to as long as 18 months total. The Department prefers to keep this period at 12 months, believing it to be a

reasonable time for this step. Correcting Deficiencies (§ 905.280 of Proposed; § 905.270 of the Interim)

HUD was urged to ensure funding for the legal services to sue for breach of warranty to make corrections, since operating receipts are only available when there are excess operating funds. The Department cannot guarantee funds for legal services under these circumstances. However, if additional funds are required for this purpose, HUD will consider requests for amendment funds for litigation, in appropriate cases.

The following chart shows how the sections of this subpart C correspond to the sections of the rule in effect upon publication of this interim rule:

Subpart C—Development

Interim section	Existing section
905.201 Roles and Responsibilities of Federal Agencies.	905.202.
905.205 Allocation.....	905.205.
905.210 Development Priorities (New, based on sec. 6(h)-(j), 1937 Act).	
905.215 Production Methods and Requirements.	905.203.
905.220 Application Procedures.....	905.206.
905.225 IHA Development Program.	New.
905.230 Site Selection Criteria.....	905.216.
905.235 Types of Interest in Land.	905.218.
905.240 Appraisals.....	905.219.
905.245 Site Approval.....	905.217.
905.250 Design Criteria.....	905.212 and 905.215.
905.255 Total Development Cost Standard.	905.213, 905.214.
905.260 Construction and Inspections.	908.221.
905.265 Warranty Inspections and Enforcement.	905.222.
905.270 Correcting Deficiencies.....	905.223.

Subpart D—Operation

Admission policies (§ 905.301)

To properly implement the requirements that preference be given in admission to persons qualifying for certain Federal selection preferences, § 905.301(a)(2) has been revised to include reference to these preferences.

To bring this rule into compliance with 24 CFR part 750, § 905.301 has been modified to add paragraph (a)(3)(iv), to

require IHAs to obtain and verify social security numbers in the course of income certifications. In addition, a new paragraph (a)(3)(v) adds a requirement that IHA admission policies stipulate procedures for determining rights of succession to an IHA unit in the event of the death of a homebuyer where no successor has been designated by contract.

Pet ownership was the subject of paragraph (d) of the proposed rule, in accordance with a statutory provision in effect when that rule was published. However, the Indian Housing Act of 1988 provided that the previously enacted provision concerning pets did not apply to Indian Housing, so that provision has been eliminated, as in the interim rule published on September 26, 1988.

The proposed consolidated Indian housing rule provided that an IHA could request higher income limits where decent, safe, and sanitary housing is not otherwise being provided in an Indian area even for those of relatively high income and there is no available source of funding for such housing. The interim rule provided that income limits could be raised (or lowered) only in extremely unusual cases, where family incomes are unusually high (or low). The reason for that change was that the Indian Housing Act of 1988 addressed the issue of admitting Indian families to the Indian housing program whose incomes were above the income limits, and it specifically limited the number. Section 3(b)(2) of the United States Housing Act of 1937 authorizes an increase (or decrease) in income limits in this program solely when family incomes in the area are unusually high (or low). There is no other statutory basis for changing the income limits, and there is now a statutory basis for limiting the number of families admitted who have incomes in excess of the income limits.

One IHA objected to the language permitting increases in the income limits only in "extremely unusual cases", because it advocated allowing higher income families to participate in the situations described in the proposed rule. It stated that there are numerous situations where housing is unavailable in an Indian area for those of relatively high income, even in light of new HUD rules permitting FHA mortgage insurance on reservation land. The Department disagrees with this comment. To date, we have not received a request for special Indian income limits. Moreover, the Department concludes that it is not authorized to increase income limits on any basis other than that stated in section 3(b)(2).

This interim rule also contains new language stating that changes in admission income limits are approved jointly by the Assistant Secretary for Housing and the Assistant Secretary for Public and Indian Housing, with the concurrence of the Secretary of Agriculture (as required by law). Field offices and IHAs are not authorized to approve such changes. This procedure is not a difference from current practice, but a specific restatement of current procedure.

With respect to the admission of non-elderly single persons, § 905.301(d) contains language from the current § 912.3. A new paragraph (e) has been added to authorize IHAs to admit "near-elderly" families or individuals ahead of other families or individuals in the absence of qualified elderly families. Federal Selection Preferences (§ 905.305)

An all-new § 905.305 has been created to elaborate on the statutory requirement that preference be extended to families involuntarily displaced, living in substandard housing, or paying more than 50% of family income for rent in determining the admission of families to this program, as well as to other HUD-assisted housing. (For example, see §§ 880.613 and 960.211.) Prohibition on Housing Assistance to Ineligible Aliens (§ 905.310)

Section 214 of the Housing and Community Development Act of 1980, as amended by section 329 of the Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a), section 121 of the Immigration and Control Act of 1986, and section 184 of the Housing and Community Development Act of 1987, prohibits making assistance under the United States Housing Act of 1937 ("Act") available for the benefit of ineligible aliens. A proposed rule to implement section 214 was published on October 19, 1988 (53 FR 41038). A final rule is expected to be published soon, and this section will then be modified to reflect its content.

Determination of Rents and Homebuyer Payments (§ 905.315)

There was at least one comment recommending addition of a provision to allow forbearance of the amount of the administration charge when a homebuyer is unable to make a scheduled payment. No such forbearance provision has been added to this section, or to the following subpart, because IHAs already have limited authority to establish repayment agreements to permit catching-up on overdue amounts. However, we continue to require enforcement of leases and homebuyer agreements, and

if a pattern of non-payment emerges, then it is the IHA's responsibility to initiate eviction, or to transfer the homebuyer to the rental program.

Paragraph (c)(2) has been revised to add reference to verification of information with respect to alien status and social security number received in the application or income certification processes.

Language found in § 905.315(c)(4) of the proposed rule restricting eviction of families based on their income has been dropped from this rule because it is irrelevant. The part of that paragraph addressed to rental units is generally not applicable in the context of Indian housing programs, and the specific provisions relating to homeownership programs are more fully stated elsewhere.

Annual Income (§ 905.320)

One commenter suggested that the income of all full-time students, regardless of age, be excluded from the family's income. This interim rule does not incorporate that change, in the interest of maintaining consistency with income definitions among all HUD assisted housing programs. However, student income is one of several types of income under consideration for exclusion in a Department-wide redefinition of income that will be the subject of a separate rulemaking.

Another comment on the topic of income was a request that the statutory exclusion of \$2,000 of per capita shares be clarified to cover the first \$2,000 received annually. The present rule (by way of an implementing Notice) simply re-states the language of the statutory exemption. In response to a GAO audit, the Department has gone on record as agreeing that clarification of the language is desirable, but it is HUD's position that such further specification should be initiated by the Congress, rather than by one of the several Executive departments responsible for administration of the policy.

Total Tenant Payment (§ 905.325)

Several commenters requested that the statutory authorization for IHAs to establish ceiling rents based on the market value of a unit be addressed in this rule. This policy would permit families who must remain in rental housing (where 30 percent of adjusted income is required for rent) while waiting for a Mutual Help unit to become available (where a lower percentage is usually charged) to avoid paying an unreasonably high rental charge.

The Department's ceiling rent policy was published in the Federal Register on March 15, 1989 (54 FR 10730) and in HUD Notice 89-21, dated April 28, 1989. At this writing, the Department has not published a rule on ceiling rents, but a rulemaking on this subject is underway. When it is complete, it will amend this section.

Sections 905.315(a) and 905.325(b) have been revised to facilitate payment of utility reimbursements directly to the utility provider, upon the agreement of the utility company and the IHA. This policy removes the previous condition that the tenant must agree to the direct payment. This change was made in response to specific comments on the proposed rule, indicating that IHAs had occasionally experienced deteriorating relationships with utility companies where families had not remitted the utility reimbursement promptly to the utility company. The revised policy is intended to assure that utility reimbursements are, in fact, paid to the utility provider to prevent interruption of utility services and to emphasize that amounts paid in utility reimbursements are not in any way to be construed to be discretionary income to the tenant family.

Mutual Help Required Monthly Payment (§ 905.330)

In response to public comment critical of the requirement that the administration charge include a contribution to a nonroutine maintenance account, this rule removes that item.

Rent and Homebuyer Payment Collection Policy (§ 905.335)

This section has been revised. Under this rule, IHAs need no longer obtain HUD approval of collection policies as a matter of course. IHAs are authorized to promulgate rules with respect to collections policies and to furnish information copies to the HUD field office. In the case of an IHA determined to be a "high risk" IHA, the collection policy would be required to be submitted to HUD for approval.

Maintenance and Improvements (§ 905.345)

There was at least one comment urging that any reference to an IHA's responsibility to provide maintenance services if a Mutual Help homebuyer failed to provide them should be eliminated. It was argued that HUD's inclusion of the provision invites homebuyer neglect by assuring that an IHA will take care of maintenance irrespective of the requirements of the Mutual Help Occupancy agreement,

which requires the homebuyer to perform such services. This interim rule leaves the cited language intact. We believe that the IHA has a legitimate interest in making sure that its properties are adequately maintained. The homebuyer's obligation can be enforced through charging against homebuyer accounts as described in this section or by eviction.

Another comment requested funding for such maintenance under operating subsidy. This suggestion was rejected because the Department does not want to encourage homebuyer neglect of maintenance responsibilities. However, operating subsidy is available on a special purpose basis for Mutual Help homes where it is necessary to rehabilitate a vacant home before assignment to a subsequent homebuyer.

With respect to the annual inspection of each home, this interim rule provides that the IHA may perform inspections every three years instead if a homebuyer who is in compliance with the original terms of the homebuyer agreement and the home was in decent, safe, and sanitary condition at the previous inspection. However, this section also provides that if the homebuyer ceases to be in compliance with the homebuyer agreement, annual inspections will be reinstituted immediately.

Correction of Management Deficiencies (§ 905.360 of Proposed; § 905.350 of Interim Rule)

The proposed rule's § 905.350 on procurement and § 905.355 on contracting have been moved to subpart B, which covers procurement activities. This new section has been modified to emphasize HUD's responsibility to provide maximum feasible assistance to IHAs in remedying management deficiencies, and to relate management deficiencies to the discussions of "high risk" IHAs in subpart A of this part and in 24 CFR part 85.

Tenant Participation in Management (§ 905.365 of Proposed; § 905.355 of the Interim Rule)

In the proposed rule, it was noted that part 964—which governs tenant participation with respect to the public housing program—is not applicable to IHAs. The subject was treated in a brief manner, in line with HUD's policy of encouraging local decisions about the extent and form of tenant participation to be made by an IHA after consultation with its tenants. However, since that time legislation making available certain grants to PHAs and IHAs to combat drug abuse in their projects has given preference to organizations that qualify

as Resident Management Corporations or Resident Councils, as described in part 964. (see the Notice of Fund Availability published on September 18, 1989 at 54 FR 38496.)

As a result, the Department has decided that it would be advantageous for a modified version of part 964 to apply to Indian Housing Authorities. The revised section, therefore, tracks §§ 964.1, 964.3, 964.7, 964.15, 964.19 and 964.21, tailored to be flexible to accommodate the differences between the predominant housing stock of PHAs and IHAs. The term "Resident Council" used in part 964 has been replaced with the term "Resident Organization" to avoid confusion with the governmental connotation of the word "council" to Indians. (The term "Resident Organization" is defined in this rule to mean the same as the statutory term "Resident Council".) The term "resident", as used in the terms Resident Management Corporations and Resident Organizations, includes participants in the rental program, the Turnkey III program, and the Mutual Help program.

IHA Employment Practices (§ 905.360 of Interim Rule)

This section is new. Its purpose is to make clear that the Indian preference requirements of section 7(b) of the Indian self-Determination and Education Assistance Act are applicable to IHA employment as well as to their contracting practices. This section does not constitute a new policy but a confirmation of existing policy.

The following chart demonstrates the relationship of the sections of this interim rule to the sections of the currently effective rule:

Subpart D—Operation

Interim section	Existing section
905.301 Admission Policies	905.302, 912.3, 912.4, 960.205, 960.207
905.310 Restriction Against Ineligible Aliens	912.5-912.7
905.315 Determination of Rents and Homebuyer Payments	905.304, 913.108, 913.109, 913.106
905.320 Annual Income	913.107
905.325 Total Tenant Payment	905.416
905.330 Mutual Help Required Monthly Payment	905.416
905.335 Rent and Homebuyer Payment Collection Policy	905.305
905.340 Grievance Procedures and Leases	Part 966, 905.303

Interim section	Existing section
905.345 Maintenance and Improvements.....	905.306
905.350 Correction of Management Deficiencies.....	905.308
905.355 Tenant Participation and Management....	Part 964

Subpart E—Mutual Help (MH) Homeownership Program

Scope and Applicability (§ 905.401)

IHAs objected to the proposed rules changes to the accounts used in the Mutual Help program and urged that HUD refrain from creating yet another program for IHAs to administer. The Department agrees with this comment, and therefore has restored the Mutual Help programs existing accounts in this interim rule. The Self-Help program, which has been added to comply with provisions of the Indian Housing Act of 1988 (and is discussed at length in a new subpart F), is primarily a new development method. Once the units are developed under this method, they must comply with Mutual Help requirements.

Application (§ 905.407 of the Interim Rule)

This section corresponds to paragraphs (a) through (d) of § 905.410 of the proposed rule, which deal only with the application. The portion of proposed § 905.410 that dealt with construction has been moved to a new § 905.413.

HUD Review of Application (§ 905.410 of the Interim Rule)

This new section has been added to clarify what standards applied to determine whether an application will be funded.

Special Mutual Help Development Provisions (§ 905.410 of Proposed; § 905.413 of the Interim Rule)

Six commenters recommended that contractors do not need a copy of the Mutual Help and Occupancy agreement that is executed by homebuyers. We agree and have removed that provision. Several IHAs also stated that they should not have to contract separately for MH construction. HUD procedures continue to provide that there be separate construction contracts for development of rental units and for development of MH units, because these different types of units are to be developed and maintained as separate projects under separate Annual Contributions Contracts.

A commenter suggested that a Tribal official or attorney should be allowed to certify that there is evidence of sufficient applications to support the MH project. The Department is unwilling to accept such a certification and prefers to retain the current system of having an IHA submit signed applications of potential homebuyers.

Selection of Homebuyers (§ 905.415 of Proposed; § 905.416 of Interim Rule)

This section has been changed substantially from the proposed rule's provisions, in accordance with the changes made with respect to admission by the Indian Housing Act of 1988 and the interim rule issued to implement it.

One of the commenters who responded to that interim rule praised the provision permitting admission of non-lower income families but suggested that the number of units permitted for this purpose was too low. The formulation of the limit specified in the Indian Housing Act of 1988, as restated in paragraph (a)(2), is that the greater of ten percent of the dwelling units in the project or five dwelling units may be used for non-lower income families. Any increase in the number would require a legislative amendment.

One commenter suggested that HUD should use its regulatory authority under title VI of the Civil Rights Act of 1964 to compel the availability of alternative financing, so that non-lower income families can obtain housing without reliance on the Mutual Help program. We are skeptical about this approach to encouraging greater private lending but do applaud the Civil Rights Division of the U.S. Department of Justice in its efforts to enforce civil rights laws against private lenders.

A commenter asked what would happen if the income of a family that had executed a homebuyer agreement but had not yet commenced occupancy changed—would it be found ineligible because of the change in income? What if the family had been selected but had not yet executed the homebuyer agreement but is just on the waiting list? The execution of the MHO agreement is the point at which the IHA and homebuyer become legally obligated to each other to participation. If it becomes evident after execution of the agreement that the homebuyer will not be able to meet the obligations under the agreement, the agreement is subject to termination. The IHA may want to counsel the homebuyer and advise the homebuyer of any other options, such as IHA owned rental housing. A new paragraph (g) has been added to clarify this point.

A commenter stated that the Federal preferences should not be applied to require selection of a family that would not be able to sustain homebuyer status. Paragraph (b) has been expanded to state that a family cannot be selected for this program unless it is able and willing to meet all obligations of the homebuyer agreement, including maintenance, payment for utilities, payment of the MH contribution, and monthly payment of at least the administration charge to the IHA.

Another commenter on that interim rule expressed disapproval of the provision of the rule that permits admission of non-Indian families in the Mutual Help program. Again, the reason for the provision is that the 1988 statute requires it.

In response to a request that the rule should specifically permit subletting of MH homes when a homebuyer must live elsewhere temporarily for education, a job transfer, or service in the armed services, paragraph (e) has been revised to refer to temporary absences that are in accordance with the IHA's occupancy policy. The Mutual Help and Occupancy agreement already permits such a practice, with IHA approval.

Mutual Help Contribution (§ 905.420 of Proposed; § 905.419 of Interim Rule)

Commenters suggested that the contribution provision should be less detailed—that any valid lease for land should be sufficient, especially since some Tribal land is leased but not allotted or assigned. It should not matter whether the land is donated by the homebuyer, the Tribe, or a third party on behalf of the homebuyer. Satisfaction with the language on MH contribution in the interim rule implementing the Indian Housing Act of 1988 was expressed. This rule adopts the language of that interim rule.

There was objection to the requirement that all land be appraised, and the suggestion was made that the value of a lot be presumed to be \$1,500. Paragraph (a)(3) of this section and § 905.240 on appraisals clarify the requirements. The value of donated trust land may be presumed to be \$1,500, and an appraisal is not necessary. In fact, paragraph (a)(3) of this section provides that, in the Mutual Help program, the value accorded to the land contributed may not exceed \$1,500.

Concern was expressed about when the prospective homebuyers were to execute the homebuyer agreements—whether promptly after approval of the development program, in conjunction with approval of the construction contract, or immediately before

occupancy. Paragraph (b) of this section now requires that homebuyer agreements and land leases be signed before execution of the construction contract. If an IHA has exceptional circumstances that would justify a later execution of some of the homebuyer agreements, it may request an exception to this requirement from HUD. (The MH contribution must be furnished before occupancy of the unit.)

Commencement of Occupancy (§ 905.425 of Proposed; § 905.422 of Interim Rule)

There was a question about how to credit the MH contribution, in accordance with paragraph (b) of this section, when a project was to be converted from the existing MH program to the new MH program envisioned under the proposed rule. This is no longer a problem since the Department has decided not to create a new MH program.

Inspections (§ 905.430 of Proposed; § 905.425 of Interim Rule)

Inspections of the home made before the homebuyer moves in that are for the purpose of establishing a record of the condition of the home on the date of occupancy are done by an IHA representative, not a professional inspector. A commenter recommended that the term "inspector" not be used in this context. The language has been changed to use "IHA representative."

A commenter indicated concern about the use of written reports of the condition of the home signed by the homebuyer. Would such reports limit the homebuyer's right to later claim defects in construction? A sentence has been added to paragraph (a)(1) of this section to state that this written statement of the condition of the home does not limit the homebuyer's right to claim latent defects in construction that may be covered by warranties.

Maintenance, Utilities, and Use of Home (§ 905.435 of Proposed; § 905.428 of Interim Rule)

Differing views were presented on the role of an IHA in home maintenance. One IHA stated that an IHA should not perform any maintenance on a home before the homebuyer agreement has been terminated and the unit vacated. Another IHA stated that because of a remote location, it might be that the only skilled maintenance workers available to work on the homes would be IHA employees.

The proposed and interim rules provide that a homebuyer's failure to perform necessary maintenance constitutes a breach of the homebuyer agreement. The homebuyer is to agree to

a remedial plan if maintenance has been inadequate, and the agreement is to be terminated if such a plan is not fulfilled. Maintenance work is to be performed by the IHA without termination of the agreement only where there is an immediate threat to health or safety, as described in paragraph (a)(2)(ii). The Department believes that this principle must be maintained if homebuyers are to take seriously their responsibility for home maintenance.

One commenter recommended that a prohibition against conducting a business of any kind be added to the rule. The Department believes that the provisions of paragraph (c), which permits an IHA to approve operation of a small business in the home under certain conditions, provide IHAs with appropriate authority to permit the operation of businesses in homes where they will not be disruptive to neighbors.

Purchase of Home (§ 905.455 of Proposed; § 905.440 of Interim Rule)

A commenter stated that HUD should specify what standard or formula it will use to establish the interest rate, so that there will be reasonableness and predictability in the program. The Department has decided that the interest rate used in determining the purchase price will be determined by the IHA, instead of by the Department, provided that it does not exceed the prevailing VA loan rate. (§ 905.440(b)(2).)

Operating Subsidy (§ 905.445 of Proposed; § 905.434 of Interim Rule)

With respect to collections obtained from homebuyers who have vacated a unit (§ 905.434(b)(2)), an IHA recommended that IHAs be allowed to keep a percentage of such funds without any offset against operating subsidy. The Department disagrees with this recommendation, especially since HUD usually provides the funds to repair the unit for a subsequent homebuyer.

Homebuyer Accounts (§ 905.450 of Proposed; § 905.437 of Interim Rule)

Several IHAs criticized the mandatory creation of a maintenance account found in the proposed rule, since it would not encourage the homebuyer to provide maintenance, and the equity account can be used in emergency situations. Homebuyers could not afford an addition to the administration charge to fund this new account adequately. The Department agrees that no such new account is necessary.

The inability of a homebuyer to assign, mortgage, or pledge any rights in the homebuyer agreement or in any account or reserve prevents the

homebuyer from being able to secure a home equity loan, one IHA commented. The nature of a homebuyer's interest in the home is not sufficient to sustain a home equity loan in any event. Since the homebuyer agreement is essentially a lease with option to purchase, there is no established "home equity" to be pledged as security for such a loan. However, we do note that this section of the rule provides that the IHA and HUD may approve an assignment of a homebuyer's rights under a homebuyer agreement, and that such approval is generally allowed to permit a replacement homebuyer.

Purchase of Home (§ 905.455 Proposed; § 905.440 Interim Rule)

There were objections to making outright purchase of the home mandatory at any particular point in advance of the end of the amortization period. In accordance with the understanding that the MHO agreement is a lease with an option to purchase the home, paragraphs (d) and (e) have been revised to reflect that purchase is optional. (At no time during the effectiveness of the MHO agreement does the homebuyer acquire an equity interest in the home. Only after exercising the option to purchase does the homebuyer obtain an equity interest, becoming a "homeowner.")

Another commenter objected to the requirement of paragraph (e)(7) that all proceeds from the conveyance of a home must be used for new housing development. The IHA instead wanted to use the funds for a revolving loan fund for major repairs and improvements by the homeowners. The provisions of HUD forgiveness of IHA debt for construction of projects require that the proceeds from the sale of homeownership units be used to reduce the future need for annual contributions to the IHA. Since annual contributions are only made for development, modernization of existing IHA-owned properties, or acquisition and rehabilitation of properties to operate as lower income housing, only use of the funds for these types of activities will satisfy the objective.

IBA Financing (§ 905.460 Proposed; § 905.443 Interim Rule)

One commenter stated that this type of financing would not work on trust land. Doubt was expressed about the authority of Tribal or state courts to foreclose. We assume that each IHA will investigate these matters for itself before deciding whether to offer financing.

Paragraph (a)(2) requires that a homebuyer have sufficient income to cover expected expenses of the home with 30 percent of family income. One commenter suggested that this percentage be stated as a range from 15 to 30 percent. If a homebuyer can cover these expenses with only 15 percent of family income, it will satisfy the rule's requirement that 30 percent of income be at least equal to the sum of the various housing expenses. We believe that the current formulation of this standard is more clear than the suggested substitute.

One commenter recommended that the rule should state clearly that upon conveyance with IHA financing, the homebuyer's status is converted to that of mortgagor, and the MH program restrictions (with respect to occupancy, for example) no longer apply. We have added a paragraph (e) to clarify that such a transformation takes place.

A commenter recommended that conveyance of the home to the homebuyer with IHA financing should not preclude the homeowner from the benefit of project-wide modernization. We disagree. Once a unit has been conveyed, the relationship changes. Once a family moves from the status of a resident under a lease with option to purchase agreement to a mortgagor under a mortgage/loan agreement, the family is then like any other homeowner and must provide for financing of his or her own repairs.

After conveyance, there is no account maintained for the homeowner to cover maintenance expenses. One commenter advocated that the IHA give the homeowner access to an account for a loan for nonroutine maintenance or for repair of the unit in the event of termination of the financing agreement. The homeowner is allowed to purchase with financing only if able to absorb the costs of maintenance (paragraph (a)(2)(iv)). At that point, there is no MH account available for the unit.

Termination of MHO Agreement (§ 905.465 Proposed; § 905.446 Interim Rule)

The rule states (in paragraph (b)) that the method of termination of the agreement by the IHA must comply with State, local, or Tribal law. It should go farther and state that the procedure to be followed is the eviction procedure for forcible entry and detainer actions—used for renters—under applicable State law (rather than for ejectment or foreclosure—used for owners of real property). We agree. The rule has been revised to clarify that the agreement is a lease and that the appropriate procedure to be followed for termination of the

agreement is written notification to the homebuyer, enforced if necessary, by eviction—not foreclosure.

One commenter requested that the proposed nonroutine maintenance account should be refunded to the homebuyer instead of remaining for use by the subsequent homebuyer. Since this account has been eliminated, this issue is moot.

Specific reference should be made in the rule to the costs associated with securing a vacated home, providing the termination notice and procedure, and storage or disposal of personal property as a charge against the equity account. This change has been made in paragraph (d)(1).

Succession (§ 905.470 Proposed; § 905.449 Interim Rule)

The three events that would have triggered this provision of the proposed rule have been pared to two: death and mental incapacity. If the property is abandoned, there is no right of anyone related to the original homebuyer to succeed to the interest abandoned.

Comments were received advocating that the successor should not have to be an occupant at the time of the triggering event, and that the IHA should have the freedom to determine succession. This provision has been revised to eliminate occupancy as a requirement, but to substitute for that requirement one that the successor be a family member who is willing to make the home his or her primary residence. This requirement will help to assure that succession will not be used as a way to avoid the waiting list. These changes will take effect with respect to future homebuyer agreements, but the provisions concerning succession found in existing homebuyer agreements will be honored without change.

This section has also been modified to provide that when any successor designated by the homebuyer, in accordance with the homebuyer contract, fails to qualify as a successor, the IHA may designate a successor in accordance with its policy.

These changes will be effective only for homebuyer agreements executed after the effective date of this rule, since existing agreements have already conferred rights in homebuyers with respect to succession.

Miscellaneous (§ 905.475 Proposed; § 905.452 Interim Rule)

One IHA requested that we eliminate the requirement to include in the annual statement to the homebuyer the amount of the remaining balance of the purchase price. The reason given was that the IHA can only determine this information

by hand and the homebuyer already has the information on the original purchase price schedule. We believe that this is important information, which an IHA can prepare using any of a number of available software programs.

Conversion of Rental Projects (§ 905.485 Proposed; § 905.455 Interim Rule)

One commenter suggested that apartment units be permitted to be converted to condominium or cooperatives form of ownership. We agree that such conversions should be permitted, if feasible, and paragraph (b) has been revised to refer to these ownership forms.

The purchase price or term of the contract should be adjusted to reflect the fact that the unit is not new. The Department does not agree with this comment that such adjustment is always appropriate but will review the terms of each conversion with this possibility in mind.

Conversion should not affect the amount of funding awarded the IHA for development or the reuse of recaptured funding, states one IHA. A sentence to that effect has been added to paragraph (a).

The revised sections correspond to the current sections as shown in the following chart, and as further described below:

Subpart E—Mutual Help Homeownership Opportunity Program

Interim section	Existing section
905.401 Applicability and Scope.....	905.401
905.405 Program Framework.....	905.403, 905.405, 905.427
905.410 Special Provisions for Development of a MH Project.....	905.404, 905.413, 905.414
905.415 Selection of MH Homebuyers.....	905.406 905.407
905.420 MH Contribution.....	905.408 905.409
905.425 Commencement of Occupancy.....	905.415
905.430 Inspections, Responsibility for Items Covered by Warranty.....	905.417
905.435 Maintenance, Utilities, and Use of Home.....	905.418 905.420
905.440 Operating Reserve.....	905.311
905.445 Operating Subsidy.....	
905.450 Homebuyer Accounts.....	905.421 905.422
905.455 Purchase of Home.....	
905.460 IHA Homeownership Financing.....	905.423
905.465 Termination of MHO Agreement.....	905.424

Interim section	Existing section
905.470 Succession Upon Death, Mental Incapacity or Abandonment.....	905.425
905.475 Miscellaneous.....	905.426
905.480 Conversion of Rental Projects.....	905.429
	New

Subpart F—Self-Help Development in the Mutual Help Homeownership Program

This subpart constitutes the substance of the interim rule on the same subject that was published on September 26, 1988 (53 FR 37506) to implement the Indian Housing Act of 1988. However, this material has been separated from the remainder of the Mutual Help program so that an IHA that chooses not to use this development method need not read through this material in the principal Mutual Help subpart.

Only six public comments were received on the interim rule concerned with this subject. Five of them were from IHAs that expressed dissatisfaction with the concept, calling it "little more than a re-emergence of the old [Mutual Help] 'sweat equity' program". The features of the program that drew specific criticism were the tracking of the specific work done by each family, the training and supervision of the families, the amount of time to be contributed by families whose income qualifications would require that they have other employment, the lack of an incentive for families to participate, and the requirement for the IHA to have a letter of credit or other guarantees. They indicated that they believed they lack the capacity to provide the financial, legal, administrative, and technical responsibilities to conduct the program. They also expressed concern that Congress might choose to fund only this method of development, thereby reducing the funds available for them to use.

The sixth comment recommended that insurance be provided through the IHA, because families would not always be working on their own homes and might experience circumstances beyond their control. An IHA is encouraged to do this if it can obtain a reasonable rate, as described in § 905.466(d). This commenter also recommended that the rule not require that sites be in close proximity, but allow the IHA, the HUD Office of Indian Programs, and participants work out the logistics and reasonableness of proximity of the units. We have adopted this suggestion and removed the proximity language.

The issue of funding for a letter of credit in view of the restriction against commingling funds was also raised by this commenter, who advocated HUD exercising control by advancing funds for the construction through the HUD field office. The Department believes that this development method requires much more skill and oversight by an IHA than other methods, and HUD does not want to take on a direct oversight role. By requiring the IHA to provide monetary assurance of completion, the Department hopes to provide adequate incentive to participating IHAs to safeguard the Federally funded project.

Subpart G—Turnkey III Program

Introduction (§ 905.501)

One comment was that the words "if any" (or "if applicable") be added after "homebuyer association" to provide for the possibility that an IHA might not have a homebuyer association in its Turnkey III projects. (See § 905.511 for a discussion of this type of association and a less formal substitute in the case of scattered site homes.) This change has been adopted, in paragraph (d) of this section and elsewhere in the subpart.

Conversion of Turnkey III Units and Transfer of Occupants (§ 905.503)

A commenter said that conversion should be permitted for homebuyers in default of their Turnkey III contracts, because if they are not in default they have no incentive to convert to Mutual Help.

There are circumstances under which HUD will allow a homebuyer in default to transfer to the MH program. However, the homebuyer must be able to meet the mutual help requirements and be willing to sign a payback agreement that would satisfy the debt within a three year period. Payments under the payback agreement would be required in addition to the monthly homebuyer payment under MH. HUD would like to monitor such conversions and transfers closely and so has added only a parenthetical note about the possibility for them in this rule.

With respect to incentives to convert, there are several reasons why a Turnkey III homebuyer would choose to change to the MH program. First, the MH program participants' monthly payments are currently based on 15 to 30 percent of their adjusted income, whereas the majority of the Turnkey III participants' monthly payments are based on 30 percent of their adjusted income. Second, in the MH program, everything paid by the participants above the administration charge is put

into their equity accounts, which has a chance of increasing and allowing an early payoff of debts. In the Turnkey III program, after applying the payments to the required breakeven amounts (EHPA, NRM, and operating expense), the excess constitutes additional project income.

A commenter recommends allowing IHAs and the HUD field offices to work out the best solution without being hindered by the impact on operating subsidy needs. IHAs and HUD field offices will analyze the effect of conversion of units on the remaining units. If there is a problem of financial feasibility of the remaining units, under paragraph (b)(1)(v), HUD will make the final decision.

The comment was also made that additional funding might be necessary to restore the units to be converted to the condition required by paragraph (b)(1)(iv). If additional funding is needed to restore units to a habitable condition, when the condition is not the result of design defects, then the homebuyer will be charged for any repairs. All charges will first be made to the Earned Home Payments Account (EHPA), and then charged to the homebuyer for repayment under a payback agreement. Once the unit has been converted, the Nonroutine Maintenance Reserve (NRM) will be converted into the Monthly Equity Payments Account (MEPA).

Selection of Turnkey III Homebuyers (§ 905.505)

The requirement that an IHA select applicants so as to achieve an average monthly payment that is 10 percent above the breakeven point was criticized as unrealistic, especially in an older project with little turnover and homebuyers living on retirement incomes. It was argued that the budgetary impact on the 1600 unit Turnkey III housing stock of removing this requirement would be minimal. The Department disagrees with this comment. The requirement that the average monthly payment be 110 percent of breakeven is necessary to insure the viability of the projects.

The following chart shows how the sections of this interim rule relate to the content of section of rules now in effect:

Subpart G—Turnkey III Program

Interim section	Existing section
905.501 Introduction.....	904.101
905.503 Conversion of Turnkey III units and transfer of occupants.....	New

Interim section	Existing section
905.505 Selection of Turnkey III homebuyers	904.104
905.507 Homebuyer Ownership Opportunity Agreements	New
905.509 Responsibilities of Homebuyer	904.107
905.511 Homebuyers' association and homeowners' association	904.106, 904.118-120, & 904.301-308
905.513 Breakeven amount and application of monthly payments ..	904.108
905.515 Monthly operating expense	904.109
905.517 Earned Home Payments Account ..	904.110
905.519 Nonroutine maintenance reserve	904.111
905.521 Operating reserve	904.112
905.523 Operating subsidy	New
905.525 Achievement of ownership	904.113, 904.115
905.527 Payment upon resale at profit	904.114
905.529 Termination of Homebuyer Ownership Opportunity agreement	New

Subpart H—Lead-Based Paint Poisoning Prevention

One public comment was received on this subject. It was recommended that the subpart should require testing procedures for additional hazards: radon, agricultural pesticides, lead solder in plumbing, asbestos, and contaminated materials in and around the area of the project. The Department was required by statute to issue a rule and testing guidelines on this subject. Under close Congressional scrutiny, the Department has spent the last year on developing guidelines and conducting a demonstration on their adequacy. Consequently, the Department has had limited time to focus on other possible hazards and construct tests and standards for assuring safety from them. However, the Department has solicited public comments on studies of the radon hazard and approaches to mitigating its effect (55 FR 1521, January 16, 1990) and will address that problem separately.

This interim rule does not contain the material that was presented in this subpart of the proposed rule. In the meantime, the guidelines have been published in the *Federal Register* on April 18, 1990 (55 FR 14555), and the lead-based paint rule on which the proposed consolidated Indian Housing rule was based is undergoing revision. By the time a final rule is published that

is based on this interim rule, the revised lead-based paint rule will have been published. At that time, this subpart will reflect that rule.

Subpart I—Comprehensive Improvement Assistance Program

The Department solicited comment on the appropriateness for Indian housing of this statutorily designed program. The primary comment received was that the program should have broader applicability to homeownership projects. For example, CIAP funds would be useful to build an addition on allotted land for a homebuyer whose family had outgrown its home or to maintain or replace equipment in Old Mutual Help projects, where inadequate incomes have resulted from HUD's policy to serve the lowest income families through MH instead of rental housing, at a time when administration charges were considerably less than rents. The Department agrees that CIAP should have broader applicability for homeownership projects.

The Department is considering the following changes and solicits comments on them before publication of a final rule:

1. To allow management improvements that are project specific or IHA-wide in nature to be eligible modernization costs for homeownership modernization if:

- The IHA has only homeownership units;
- All the IHA's rental units over five years of age had been comprehensively modernized; or
- The IHA has a demonstrated need for management improvements.

2. To expand the definition and eligible work items for homeownership projects to increase homeownership activity under CIAP. Proposed changes would allow for homeownership CIAP without additional cost to the homebuyer to provide for unusual structural maintenance required to ensure project viability; would eliminate the prohibition of physical improvements that are the responsibility of the homebuyer (since all maintenance is a homebuyer responsibility); and would allow for additions to units at additional cost to the homebuyer where needed to accommodate changes in family composition.

Several minor changes have been made in this interim rule. Eligible management improvement areas have been revised to include drug elimination efforts as outlined in HUD Notice PIH 89-15 and to include resident management activities. Other changes have been made to conform to a final

rule on the CIAP published on December 21, 1989 (54 FR 52686).

Subpart J—Performance Funding System for Operating Subsidy for Indian Housing Rental Programs

As background, we note that the foundation for operating subsidy of any sort is found in section 9 of the United States Housing Act of 1937. Section 9(a)(1) of the United States Housing Act of 1937 authorizes HUD to make funds available to public housing agencies for the operation of lower income housing projects. It provides that the amount provided is not to exceed the amount necessary—

(A) To assure the lower income character of the projects involved,

(B) To achieve and maintain adequate operating services and reserve funds, and (C) with respect to housing projects developed under the *Indian and Alaskan Native housing program* assisted under this Act, to provide funds (in addition to any other operating costs contributions approved by the Secretary under this section) as determined by the Secretary to be required to cover the administrative costs to an Indian housing authority during the development period of a project approved pursuant to section 5 and until such time as the project is occupied.

For Indian Housing, this language permits funding to cover administrative costs during the development of a project in addition to funding operating costs of completed projects.

The method of calculating need for operating subsidy is specified in section 9(a)(3) of the Act. It is to be a performance funding system—

That establishes standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and the characteristics of the families served, in accordance with a formula representing the operations of a prototype well-managed project.

The performance funding system (PFS) used for Indian Housing rental projects in most jurisdictions has been the same as that used for Public Housing rental projects in most jurisdictions. That PFS, as set forth in 24 CFR part 990, and replicated in this consolidated Indian Housing rule in subpart J, provides for funding the difference between anticipated project income and the sum of (1) an allowable expense level, derived from the housing authority's approved budget expense level for the year before funding started under the PFS (base year), (2) an approved utilities expense level, based on past consumption and current rates, and (3) certain other approved costs.

The method of calculating operating subsidy for developments for the IHAs

in Alaska has been different because their significantly higher costs have not fit the pattern for determining base year expenses applicable to other areas and changes in approvable expenses have not followed the general pattern. Consequently, as described in 24 CFR part 990, subpart B, the Alaskan IHAs have followed financial reporting and review procedures that are generally applicable to State agency recipients of Federal grants (found in 24 CFR part 85) and specialized budget approval procedures to determine the amount of operating subsidy needed by those IHAs "to assure the lower income character of the projects involved and to achieve and maintain adequate operating services and reserve funds". The new subpart N found in this rule is virtually the same as the existing subpart B of part 990, and it is applicable to both rental and homeownership developments operated by IHAs in Alaska.

The provisions concerning operating subsidy for homeownership projects are considerably more limited than for rental housing, since the premise for this type of housing is that the homebuyers can support the cost of operations. Consequently, there are specialized provisions for operating subsidy for these types of projects in the subparts governing their operations generally: subpart E for Mutual Help, and subpart G for Turnkey III. Sections 905.434 and 905.523 provide that operating subsidy may be provided when necessary to cover certain types of costs (similar to the category of "other costs" in the PFS rule applicable to rental housing) that are approved by HUD in an operating budget.

Several comments were received on the operating subsidy provisions in this subpart, and its applicability to Indian housing. It was noted that the formula that is used for PFS is based on a prototype well-managed PHA, not IHA. Elevator buildings are uncommon in Indian housing and the formula should not reflect them. The average distance of buildings from the IHA office would be a more useful measure, since an IHA may have units spread over nine counties, spanning 150 miles, with only four maintenance employees to service them. This distance factor would reflect the higher costs involved in serving dispersed units. IHAs with fewer than 50 units need additional funds to be able to hire experienced and knowledgeable employees. Ideally, IHAs should be afforded the same case-by-case subsidy determination offered to PHAs in the

Virgin Islands, Puerto Rico, and Guam and to IHAs in Alaska.

These comments challenge the statutory underpinning of PFS. Although the Indian Housing Act of 1988 did provide for separation to some extent of Indian housing from public housing, it did not provide for separate calculation of operating subsidy under the PFS. Since section 9(a) of the United States Housing Act of 1937 provides that HUD is to provide funding for operating costs in accordance with a performance funding system substantially based on the system defined in regulations in effect in February 1988, and IHA rental housing projects were at that time subject to the PFS as described in this subpart, the Department believes that it is constrained in this rulemaking to follow the established PFS for rental projects.

Whether all IHAs should be funded under a different formula from that used for PHAs or under the criteria used for Alaska are issues that probably should be explored as a legislative proposal.

Additional comments were offered suggesting various revisions to the PFS. The base year expense level should be reviewed at least every two years to assure inclusion of all the functions being performed by the IHA; a three-year average should be used for the base year expense level since the first year can vary significantly from others; the AEL for new projects should be based on an average AEL for comparable projects instead of on the AEL of one comparable project; to adequately fund administrative tasks required by HUD regulation by IHAs with very few units, a minimum operating base should be included in the AEL; and the range of AEL should be no greater than 10 percent among IHAs. The Department has another rulemaking pending that revises the PFS, in response to the requirements of the Housing and Community Development Act of 1987, and a number of these issues are addressed in that rule. (See 54 FR 52000, December 19, 1989.)

The sections of the interim rule and the sections of the existing rule to which they correspond are as follows:

Subpart J—Annual Contributions for Operating Subsidy

Interim section	Existing section
905.701 Purpose and applicability.....	990.101, 990.103
905.705 Determination of amount of operating subsidy	

Interim section	Existing section
905.710 under P.F.S.	990.104
905.710 Computation of allowable expense level	990.105
905.715 Computation of utilities expense level	990.107
905.720 Other costs	990.108
905.725 Projected operating income level	990.109
905.730 Adjustments	990.110
905.735 Transition funding for excessive high-cost IHAs	990.106
905.740 Operating reserves	990.111
905.745 Operating budget submission and approval	990.112
905.750 Payment procedure for operating subsidy under PFS	990.113
905.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy	990.115
905.760 Determining actual occupancy percentage	990.117
905.765 Comprehensive occupancy plan requirements	990.118

Subpart K—Energy Consumption and Utilities Management

Public comments pointed out that § 905.330 recognized utility allowances for Mutual Help homebuyers, but § 905.885 specifically excluded the Mutual Help program from that section's provisions on utility allowance calculations. The point is well taken, and § 905.885 of this rule now provides that the utility allowance applies to the Mutual Help program. Language has been inserted to indicate that homebuyer agreements, as well as leases, are affected and that tenant payments are covered, as opposed to just "rents."

The Department has considered a recommendation that IHAs be permitted to review and update utility allowances biennially rather than annually in order to reduce workload. We have determined that annual reviews of utility allowances are desirable to protect the interests of the affected families, but we acknowledge the necessity to provide clearer instructions to IHAs on annual updates in order to minimize their workload.

The following chart shows which sections of the existing rule correspond to the sections of the new rule.

Subpart K—Energy Audits, Conservation Measures and Utility Allowances

Interim section	Existing section
905.801 Purpose and applicability.....	965.301, 965.302
905.805–905.880 Reserved.....	Parts 965, subparts C & D
905.885 Utility allowances.....	965.470–965.479

Subpart L—Operation of Projects After Initial ACC Term

There were no public comments on this subpart. The following chart shows what sections of the current rule correspond to the sections of the interim rule.

Subpart K—Operation of Projects After Initial ACC Term

Interim section	Existing section
905.901 Purpose and applicability.....	969.101
905.903 Continuing eligibility for operating subsidy; ACC extension.....	969.104, 969.105
905.905 ACC extension in absence of current operating subsidy.....	969.106
905.907 HUD approval of disposition or demolition.....	969.107
905.910 Policy and standards for HUD approval of disposition/demolition.....	970.4

Subpart L—Operation of Projects after Expiration of Initial ACC Term

This subpart tracks language on extension of the Annual Contributions Contract term and eligibility for continued operating subsidy after expiration of the initial ACC term, as provided now in 24 CFR part 969. The Department received no public comments on this topic. The following chart shows how the sections of this interim rule correspond to the sections of the existing rule.

Subpart L—Operation of Projects after Expiration of Initial ACC Term

Interim section	Existing section
905.901 Purpose and applicability.....	969.101
905.903 Continuing eligibility for operating subsidy; ACC extension.....	969.104, 969.105

Interim section	Existing section
905.905 ACC extension in absence of current operating subsidy.....	969.106
905.907 HUD approval of disposition or demolition.....	969.107

Subpart M—Disposition or Demolition of Buildings

This subpart basically repeats the current content of part 970. There was one public comment relating to cases in which HUD seeks to demolish an IHA project. We have reviewed the cited section and determined that the comment reflects a misunderstanding of the Department's rule in a demolition decision. HUD may not initiate any action to demolish housing authority property without the housing authority's explicit agreement. Therefore, there is no change to be made in the rule with respect to this issue. (We note that this subpart does not apply to housing units that are conveyed to homebuyers under terms of a homebuyer agreement.)

The sections of this interim rule correspond to sections of the existing rule as indicated on this chart.

Subpart M—Disposition or Demolition of Buildings

Interim section	Existing section
905.921 Purpose and applicability.....	970.1, 970.2
905.923 General requirements for HUD approval of disposition/demolition.....	970.4
905.925 Relocation of displaced tenants.....	970.5
905.927 Specific criteria for approval of disposition requests.....	970.7
905.928 Specific criteria for approval of demolition requests.....	970.6
905.931 IHA application for HUD approval.....	970.8
905.933 Use of proceeds.....	970.9, 970.10
905.935 Replacement housing plan.....	970.11
905.937 Reports and records.....	970.13

The Miscellaneous subpart in the proposed rule was comprised only of a waiver provision. That provision has been omitted from this interim rule, since the Assistant Secretary for Public and Indian Housing already retains the authority in § 999.101 to waive any provision of Chapter IX, including rules in part 905. However, the Miscellaneous

subpart has been retained in this rule as the repository for material that was inadvertently omitted from the proposed rule concerning the determination of operating subsidy for IHAs in Alaska. (See the discussion above for subpart J, concerning operating subsidy generally.)

Findings and Certifications**Environmental Review**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the Executive Order does not apply to this rule, since Indian tribes do not fall within the order's coverage.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule governs a program of Federal financial assistance to lower income families through housing programs administered by Indian housing authorities. It consolidates requirements concerning Indian housing in a coordinated fashion, eliminating some prior approvals for the housing authorities. The changes are not

likely to have any direct impact on families.

Regulatory Agenda

This rule was listed as sequence number 1236 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on April 23, 1990 (55 FR 16226, 16260), under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned believes that this rule may have a significant impact on a substantial number of small entities, i.e., small Indian Housing Authorities (IHAs), since most IHAs have jurisdiction over areas containing fewer than 50,000 persons. This rule primarily consolidates current rules applicable to IHAs into one part, so its impact is somewhat limited. The changes from current rule provisions that are proposed are all designed to decrease "red-tape" and increase flexibility for IHAs, and therefore should be beneficial. Typical of these changes are provisions permitting qualified IHAs to certify compliance with HUD requirements for a certain

step in the development or modernization process, instead of waiting for HUD's compliance review. About 60 to 70 percent of the IHAs will qualify to use this certification process. Other changes are intended to tailor the program from one geared to multifamily housing projects in urban areas to one geared to single family homes on remote Indian reservations. The rules that would otherwise govern IHAs on all these matters (found in Chapter IX) will be revised to eliminate references to IHAs, so that this consolidated part will be the authoritative reference point for rules affecting IHAs. The recordkeeping and reporting requirements in this proposed rule are no more onerous than the ones in currently applicable rules, and in some cases they are less burdensome. As in the case of the proposed rule, comment is specifically solicited on what recordkeeping and reporting requirements could be reduced or eliminated.

Catalog

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147 and 15.141.

List of Subjects in 24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Homeownership, Public housing.

Information Collections

Information collections contained in this rule are identical to or less burdensome than ones contained in the counterparts that currently cover Indian housing authorities and public housing agencies. The approval numbers that were assigned by the Office of Management and Budget to the provisions of the existing counterparts to these provisions pursuant to the Paperwork Reduction Act of 1980 appear in the text of this rule. The Department has identified numerous sections of this rule that either contain approved information collections or information collections that have not been approved. The following chart provides estimates of public reporting burden of these provisions. It is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

TABULATION OF ANNUAL REPORTING BURDEN

[Interim Rule—Consolidated Indian Housing Program]

Description of information collection	Section of 24 CFR affected	Number of respsds	No. of responses per respsd	Total annual responses	Hours per response	Total hours	OMB No. 2577-
Submission of documents establishing IHA	905.126(e)	180	1	180	8	1440	0030
Administrative capability: management improvement plan, high risk.	905.135 (e) and (f)	40	1	40	6	240	0130
Appeal procedure-sanctions	905.135(g)	15	1	15	2	30	0130
Indian housing manager certification-certifications & appeals procedures.	905.140 (h) and (i)	3	1	3	40	120	0115
Submission of construction and bid documents (contract administration).	905.160(a)(3)	180	3	540	6	3240	0039
Maintain procurement records	905.160(a)(4)	180	3	540	.5	13	0130
Bonding requirements	905.170(a)						0130
	905.640(d)						0130
Contracting requirements: description of bid procedures, lists of Indian-owned enterprises, statement on Indian preference, certification.	905.165	180	5	900	3	2700	0076
	905.175						
Development program	905.225	120	1	120	6	720	0032
Formal request for appraisal	905.240	128	5	640	4	2560	0031
Site approval; certification	905.245	120	1	120	1	120	0008
	905.260(f)						0021
Total development cost standard	905.255	120	1	120	1	120	0101
IHA unit inspections; signed statement from occupants	905.265	(40,000 units)	1	40,000	1	40,000	0114
Actual development cost certificate; audit verification	905.275	120	1	120	1	120	0033
Tenant admission regulations application for occupancy by single persons; verification, notification to applicants.	905.301(a)(3)	100	1	100	3	300	0063
	905.301(d)(2)						
Certification for applicants involuntarily displaced; living in substandard housing; 50% income for rent.	905.305(e)	50	1	50	1	50	0105
Annual Inspection Report to Homebuyer	905.340(d)	40,000	1	40,000	.3	12,000	0114
IHA Employment practices	905.360	180	1	180	5	900	0130
Written notification to MH homebuyer-occupancy	905.422(a)(2)	180	1	180	.30	54	0130
Written notification to homebuyer-responsibility for items covered under warranty.	905.425(b)	40,000 units	1	40,000	1	40,000	0114
Plan for noncompliance with the MHO Agreement	905.446(f)	1,000	1	1,000	4	4,000	0130
Annual statement to the homebuyer	905.452(a)	40,000	1	40,000	1	40,000	0130
Application for conversion of rental projects	905.455	3	1	3	3	9	0130

TABULATION OF ANNUAL REPORTING BURDEN—Continued

[Interim Rule—Consolidated Indian Housing Program]

Description of information collection	Section of 24 CFR affected	Number of respnds	No. of responses per respnd	Total annual responses	Hours per response	Total hours	OMB No. 2577-
Application for conversion of Old Mutual Help Projects to Rental Program.	905.458.....	3	1	3	3	9	0130
Self-Help agreement.....	905.466.....	3	1	3	3	9	0130
Self-Help application development.....	905.469..... (and § 905.460(b))	3	1	3	3	9	0112
Development program self-help project; plan, cost, certification.	905.472.....	3	1	3	4	12	0112
Default in self-help project-IHA plan for completion.....	905.475.....	3	1	3	4	12	0130
IHA requests for conversion of Turnkey III units, transfer of occupants.	905.503(d).....	3	1	3	4	12	0130
Application for Turnkey III project, waiting list.....	905.505(c).....	3	1	25	2	50	0130
Annual statement to homebuyer-earned home payments account (EHPA).	905.517(h).....	40,000	1	40,000	1	40,000	0130
Notice of termination of homebuyer ownership opportunity agreement.	905.529(a)(2).....	500	1	500	1	500	0130
Application for modernization (CIAP); budget revisions.....	905.610(c).....	140	3	420	2	840	0044
Consultation with tenants and homebuyers.....	905.655.....	140	2	280	2	560	0048
	905.610(b).....						
	905.620.....						
	905.625.....						
Implementation schedule.....	905.610(j).....	140	1	140	1	140	0065
Architect/engineer contract.....	905.640(b).....	140	1	140	1	140	0015
Construct. award, etc.....	905.640 (e)-(h).....	140	3	420	6	2,520	0039
Management improvement contracts; progress reports; fiscal closeout.	905.640(i).....	140	2	280	2	560	0049
Fund requisitions; Modernization and energy conservation standards.	905.650.....	120	4	480	2	960	0104
	905.665.....						
	905.645.....						
Computation of utility expense level; adjustments.....	905.670.....	120	1	120	2	240	0029
	905.715 (a) and (c).....						
Other costs; adjustments.....	905.730(c).....	120	1	120	2	240	0029
	905.720.....						
Estimates of other income; adjustments.....	905.730(a).....	120	1	120	3	360	0029
	905.725 (e) and (f).....						
	905.730(b).....						
Operating budget submission; payment of operation submission.	905.745.....	120	1	120	6	720	0026
Comprehensive occupancy plan.....	905.755.....	120	1	120	4	480	0066
Annual contributions contract amendment-IHA document not to convey.	905.770.....						
IHA application for demo/dispo.....	905.903(a).....	180	1	180	1	180	0130
Reports and records.....	905.931.....	3	1	3	6	18	0075
Total Burden.....	905.937.....	3	1	3	4	12	0075
						197,319	

Accordingly, part 905 of title 24 of the Code of Federal Regulations is revised to read as follows:

PART 905—INDIAN HOUSING PROGRAMS

Subpart A—General

- Sec.
- 905.101—Applicability and Scope.
- 905.102—Definitions.
- 905.105—Types of Lower Income Housing Projects.
- 905.110—Assistance From Indian Health Service and Bureau of Indian Affairs.
- 905.115—Applicability of Civil Rights Statutes.
- 905.120—Compliance With Other Federal Requirements.
- 905.125—Establishment of IHAs Pursuant to State Law.
- 905.126—Establishment of IHAs by Tribal Ordinance.
- 905.130—IHA Commissioners Who Are Tenants or Homebuyers.
- 905.135—Administrative Capability.
- 905.140—Certification of Housing Managers.

Subpart B—Procurement

- Sec.
- 905.160—Procurement Standards.
- 905.165—Indian preference.
- 905.170—Other requirements applicable to development contracts.
- 905.172—Wage rates.
- 905.175—Methods of procurement.
- 905.180—Training and employment requirements.
- 905.185—Government-wide Contract Requirements.

Subpart C—Development

- 905.201—Roles and Responsibilities of Federal Agencies.
- 905.205—Allocation.
- 905.210—Development Priorities.
- 905.215—Production Methods and Requirements.
- 905.220—Application Procedures.
- 905.225—IHA Development Program.
- 905.230—Site Selection Criteria.
- 905.235—Types of Interest in Land.
- 905.240—Appraisals.
- 905.245—Site Approval.
- 905.250—Design Criteria.
- 905.255—Total Development Cost Standard.
- 905.260—Construction and Inspections.

Sec.

- 905.265—Warranty Inspections and Enforcement.
- 905.270—Correcting Deficiencies.
- 905.275—Fiscal Closeout.

Appendix I to Subpart C—Interdepartmental Agreement on Indian Housing

Subpart D—Operation

- 905.301—Admission Policies.
- 905.305—Federal Selection Preferences.
- 905.310—Restriction Against Ineligible Aliens. [Reserved]
- 905.315—Determination of Rents and Homebuyer Payments.
- 905.320—Annual Income.
- 905.325—Total Tenant Payment—Rental and Turnkey III Programs.
- 905.330—Mutual Help Required Monthly Payment.
- 905.335—Rent and Homebuyer Payment Collection Policy.
- 905.340—Grievance Procedures and Leases.
- 905.345—Maintenance and Improvements.
- 905.350—Correction of Management Deficiencies.
- 905.355—Tenant Participation and Management.

Sec.

905.360—IHA Employment Practices.

Subpart E—Mutual Help Homeownership Opportunity Program

- 905.401—Scope and Applicability.
- 905.404—Program Framework.
- 905.407—Application.
- 905.410—HUD Review of Application.
- 905.413—Special Provisions for Development of an MH Project.
- 905.416—Selection of MH Homebuyers.
- 905.419—MH Contribution.
- 905.422—Commencement of Occupancy.
- 905.425—Inspections, Responsibility for Items Covered by Warranty.
- 905.428—Maintenance, Utilities, and Use of Home.
- 905.431—Operating Reserve.
- 905.434—Operating Subsidy.
- 905.437—Homebuyer Reserves and Accounts.
- 905.440—Purchase of Home.
- 905.443—IHA Homeownership Financing.
- 905.446—Termination of MHO Agreement.
- 905.449—Succession Upon Death or Mental Incapacity.
- 905.452—Miscellaneous.
- 905.455—Conversion of Rental Projects.
- 905.458—Conversion of Mutual Help Projects to Rental Program.

Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

- 905.460—Purpose and Applicability.
- 905.463—Basic Requirements.
- 905.466—Self-Help Agreement.
- 905.469—Application.
- 905.472—Development Program.
- 905.475—HUD Oversight.

Subpart G—Turnkey III Program

- 905.501—Introduction.
- 905.503—Conversions of Turnkey III Units and Transfer of Occupants.
- 905.505—Selection of Turnkey III Homebuyers.
- 905.507—Homebuyer Ownership Opportunity Agreements.
- 905.509—Responsibilities of Homebuyer.
- 905.511—Homebuyers' Association and Homeowners' Association.
- 905.513—Breakeven Amount and Application of Monthly Payments.
- 905.515—Monthly Operating Expense.
- 905.517—Earned Home Payments Account (EHPA).
- 905.519—Nonroutine Maintenance Reserve (NMR).
- 905.521—Operating Reserve.
- 905.523—Operating Subsidy.
- 905.525—Achievement of Ownership.
- 905.527—Payment Upon Resale at Profit.
- 905.529—Termination of Homebuyer Ownership Opportunity Agreement.

Subpart H—Lead-Based Paint Poisoning Prevention—[Reserved]**Subpart I—Comprehensive Improvement Assistance Program**

- 905.601—Purpose and Applicability.
- 905.605—Eligible Costs.
- 905.610—Procedures for Obtaining Approval of a Modernization Program.
- 905.615—Modernization Project.
- 905.620—Tenant Participation.
- 905.625—Homebuyer Participation.

Sec.

- 905.630—Special Requirements for Homeownership Projects.
- 905.635—Special Requirements for Section 23 Leased Housing Bond-Financed Projects.
- 905.638—Additional Limitations for Special Purpose Modernization.
- 905.640—Contracting Requirements.
- 905.645—Fund Requisitions.
- 905.650—Progress Reporting.
- 905.655—Budget Revisions.
- 905.660—On-Site Inspections.
- 905.665—Fiscal Closeout of a Modernization Program.
- 905.670—Modernization and Energy Conservation Standards.

Subpart J—Operating Subsidy

- 905.701—Purpose and Applicability.
- 905.705—Determination of Amount of Operating Subsidy Under PFS.
- 905.710—Computation of Allowable Expense Level.
- 905.715—Computation of Utilities Expense Level.
- 905.720—Other Costs.
- 905.725—Projected Operating Income Level.
- 905.730—Adjustments.
- 905.735—Transition Funding for Excessive High-Cost IHAs.
- 905.740—Operating Reserves.
- 905.745—Operating Budget Submission and Approval.
- 905.750—Payment Procedure for Operating Subsidy Under PFS.
- 905.755—Payments of Operating Subsidy Conditioned Upon Reexamination of Income of Families in Occupancy.
- 905.760—Determining Actual Occupancy Percentage.
- 905.765—Comprehensive Occupancy Plan Requirements.

Subpart K—Energy Audits, Energy Conservation Measures and Utility Allowances

- 905.801 Purpose and Applicability.
- 905.805–905.880 Reserved.
- 905.885 Utility Allowances.

Subpart L—Operation of Projects After Expiration of Initial ACC Term

- 905.901 Purpose and Applicability.
- 905.903 Continuing Eligibility for Operating Subsidy; ACC Extension.
- 905.905 ACC Extension in Absence of Current Operating Subsidy.
- 905.907 HUD Approval of Disposition or Demolition.

Subpart M—Disposition or Demolition of Projects

- 905.921 Purpose and Applicability.
- 905.923 General Requirements for HUD Approval of Disposition or Demolition.
- 905.925 Relocation of Displaced Tenants.
- 905.927 Specific Criteria for HUD Approval of Disposition Requests.
- 905.928 Specific Criteria for HUD Approval of Demolition Requests.
- 905.931 IHA Application for HUD Approval.
- 905.933 Use of Proceeds.
- 905.935 Replacement Housing Plan.
- 905.937 Reports and Records.

Subpart N—Miscellaneous

- 905.950 Operating Subsidy Eligibility for Projects Owned by IHAs in Alaska.

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General**§ 905.101 Applicability and Scope.**

(a) *General.* (1) Under title II of the United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (42 U.S.C. 1437aa, *et seq.*), the U.S. Department of Housing and Urban Development (HUD) provides financial and technical assistance to Indian Housing Authorities (IHAs), for the development and operation of lower income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area, as defined in § 905.102.

(2) If assistance under this part is not available to a lower income family because the family desires housing in an area within which no IHA is authorized to provide housing, or if for any other reason a family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs. (See 24 CFR part 203, and chapter VIII, as well as the remainder of chapter IX of this title.)

(b) *Other HUD regulations and requirements.* The provisions of this part are a complete statement of HUD regulations affecting the development and operation of lower income housing by IHAs except as supplemented by parts in other chapters of this title, which are referenced in this part.

§ 905.102 Definitions.

ACC Expiration Date. The last day of the term during which a particular Indian housing project is subject to all or any of the provisions of the ACC.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437-1440).

Adjusted Income. Annual income less the following allowances, determined in accordance with HUD instructions:

(a) \$480 for each dependent;

(b) \$400 for any elderly family;

(c) For any family that is not an elderly family but has a handicapped or disabled member other than the head of household or spouse, handicapped assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the handicapped or disabled person;

(d) For any elderly family—

(1) That has no handicapped assistance expenses (as defined in this section), an allowance for medical expenses (as defined in this section) equal to the amount by which the medical expenses exceed three percent of annual income;

(2) That has handicapped assistance expenses greater than or equal to three percent of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (c) of this section, plus an allowance for medical expenses that is equal to the family's medical expenses;

(3) That has handicapped assistance expenses that are less than three percent of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent of annual income; and

(e) The greater of:

(1) Child care expenses, as defined in this section; or

(2) Excessive travel expenses, not to exceed \$25 per family per week, for employment or education related travel.

Administration charge. In Mutual Help projects, the amount budgeted per-unit per-month for operating expense, exclusive of the cost of HUD-approved expenditures for which operating subsidy is being provided in accordance with § 905.434. (See § 905.330(b).)

Administrative Capability. An IHA's capability to administer programs in compliance with the Act and all applicable HUD regulations, contracts, HUD handbooks and other applicable requirements. (See § 905.135.)

Allowable Expense Level. In rental projects, the per-unit per-month dollar amount of expenses (excluding utilities, and expenses allowed under § 905.720) computed in accordance with § 905.710, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). In rental projects, the amount of utilities expected to be consumed per-unit per-month by the IHA during the requested budget year, which is equal to the average amount consumed per-unit per-month during the rolling base period. After the end of the requested budget year, the AUCL of the utility(ies) used for space heating will be adjusted by a change factor, which is defined in this section.

Annual Contributions Contract (ACC). A contract under the Act between HUD and the IHA containing the terms and conditions under which the Department assists the IHA in providing decent, safe, and sanitary housing for lower income families. The ACC must be in a form prescribed by HUD under which

HUD agrees to provide assistance in the development, modernization and/or operation of a lower income housing project under the Act, and the IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

Annual Income. See § 905.320.

Approved Certifying Organization. Any organization(s) or entity(ies) approved by HUD, under § 905.140, which will administer a program for certification of IHA housing managers under this part.

Assisted Dwelling Unit. A dwelling unit assisted under the programs covered by this part 905.

Base Year. The IHA's fiscal year immediately preceding its first fiscal year under PFs.

Base-Year Expense Level. The expense level (excluding utilities, audits, and certain other items) for the year, computed as provided in § 905.710(a).

BIA. The Bureau of Indian Affairs in the Department of the Interior.

Change Factor. The ratio of the affected IHA fiscal year heating degree days (HDD) divided by the average annual HDD of the rolling base period. (Affected year HDD divided by rolling base period average HDD).

Checkmeter. A device for measuring utility consumption of each individual dwelling unit where the utility service is supplied through a mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter readings and uses the checkmeters to determine whether and to what extent utility consumption of each dwelling unit is in excess of the allowance for IHA-furnished utilities, established in accordance with subpart K.

Chewable Surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Child Care Expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to be gainfully employed or to further his or her education only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount

deducted shall not exceed the amount of income received from such employment.

Common Property. The non-dwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development. It also may include common property as defined in a cooperative form of ownership, as determined by the IHA.

Comprehensive Modernization. A modernization program for a project which provides for all needed physical and management improvements. Under the comprehensive improvement Assistance Program (CIAP), all modernization programs are comprehensive modernization, except those defined as emergency, homeownership, or special purpose.

Construction Contract. The contract for construction in the case of the conventional method, or the contract of sale in the case of the Turnkey method.

Current Budget Year. The IHA fiscal year in which the IHA is operating.

Demolition. The razing in whole, or in part, of one or more permanent buildings of an Indian housing project.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a disabled person or handicapped person, or is a full-time student.

Deprogramming. Removal from the IHA's inventory under the ACC, pursuant to the IHA's formal request and HUD's approval, of a dwelling unit no longer used for dwelling purposes or a nondwelling structure or a unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes.

Development. The entire undertaking, including all real and personal property, funds and reserves, rights, interests, obligations and activities related thereto. Each development under an ACC has a unique project number.

Disabled Person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced Person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Disposition. The conveyance or other transfer by the IHA, by sale or other

transaction, of any interest in the real estate of an Indian housing project, but does not cover transfers of property described in § 905.921(b)(1) (i)-(vii).

Earned Home Payments Account (EHPA). In the Turnkey III program (subpart C), this account is established and maintained as described in § 905.517.

Elderly Family. A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person, as defined in this section. It may include two or more elderly, disabled or handicapped persons living together, or one or more of these persons living with one or more live-in aides, as defined in this section.

Elderly Person. A person who is at least 62 years of age.

Emergency Modernization. A modernization program for a project that is limited to physical work items of an emergency nature, posing an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant life, health, or safety or related to fire safety. Under emergency modernization, management improvements are not eligible modernization costs.

Family. Family includes but is not limited to (a) an elderly family or single person as defined in this part, (b) the remaining member of a tenant family, and (c) a displaced person.

FFY. Federal Fiscal Year (starting with October 1, and ending with September 30, and designated by the calendar year in which it ends).

Financial Feasibility. With respect to modernization, the cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other fees) of the modernization program does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total development cost standard for a new project with the same structure type and number and size of units and in the market area.

Force Account Labor. Labor directly employed by the IHA on either a permanent or a temporary basis.

Formula. The revised formula derived from the actual expenses of the sample group of housing authorities that is used in PFS, as provided for in § 905.710, to determine the formula expense level and the range of each housing authority. HUD plans to update the formula each year to reflect actual costs experienced by the sample group.

Formula Expense Level. The per-unit per-month dollar amount of expenses (excluding utilities and audits) computed under the formula, in accordance with § 905.710.

Full-Time Student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a handicapped or disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Heating Degree Days (HDD). The annual arithmetic sum of the positive differences (those under 65 degrees) of the average of the lowest and highest daily outside temperature in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

Home. A dwelling unit covered by a homebuyer agreement.

Homebuyer. The member or members of a lower income family who have executed a homebuyer agreement with the IHA and who have not yet achieved homeownership.

Homebuyer Agreement. A Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

Homeowner. A former homebuyer who has achieved ownership of his or her home and acquired title to the home.

Homeownership Modernization. A modernization program for a project that is under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunity Program. Under homeownership modernization, limited physical improvements are eligible modernization costs, but management improvements are not eligible modernization costs.

Housing Manager. Any person who, irrespective of title, is responsible for the management and operation of lower income housing subject to this part. This person may be the Executive Director, Assistant Executive Director, or any

staff member of an IHA who is responsible for overall management.

HUD. The Department of Housing and Urban Development, including the field offices that have been delegated authority under the Act to perform functions pertaining to this part for the area in which the IHA is located.

HUD Field Office. The HUD Offices in Chicago, Oklahoma City, Denver, Phoenix, Seattle, and Anchorage, which have been delegated authority to administer programs under the United States Housing Act of 1937 for the area in which the IHA is located.

IHA Homeownership Financing. IHA financing for purchase of a home by an eligible homebuyer who gives the IHA a promissory note and mortgage for the balance of the purchase price.

IHA Project Proposal. A statement of the basic elements of a project, including the estimated total development cost of the project, as adopted by the IHA and approved by HUD.

IHS. The Indian Health Service in the Department of Health and Human Services.

Indian. Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian area. The area within which an Indian Housing Authority is authorized to provide lower income housing.

Indian Housing Authority (IHA). An entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either (a) by exercise of the power of self-government of an Indian tribe independent of State law; or (b) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Interdepartmental Agreement. The agreement among HUD, the Department of Health and Human Services, the Department of the Interior, and other appropriate agencies, concerning assistance to projects developed and operated under the Act.

Live-in Aide. A person who resides with an elderly, disabled, or handicapped person or persons and who

(a) Is determined by the IHA to be essential to the care and well-being of the person(s);

(b) Is not obligated for support of the person(s); and

(c) Would not be living in the unit except to provide necessary supportive services.

(See § 905.320 for treatment of a live-in aide's income.)

Lower Income Family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Local Inflation Factor. The weighted average percentage increase in local government wages and salaries for the area in which the IHA is located and non-wage expenses based upon the implicit price deflator for State and local government purchases of goods and services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the local inflation factor each year.

Mastermeter System. A utility distribution system in which an IHA is supplied utility service by a utility supplier through a meter or meters and the IHA then distributes the utility to its tenants.

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

MH. Mutual Help.

MH Construction Contract. A construction contract for an MH project, which shall be on a form prescribed by HUD.

MH Contribution. Land, labor, cash, materials, or equipment—or a combination of these—contributed toward the development cost of a project in accordance with a homebuyer's MHO Agreement, credit for which is to be used toward purchase of a home.

MHO Agreement. A Mutual Help and Occupancy Agreement between an IHA and a homebuyer.

MH Program. The MH Homeownership Opportunity Program.

Modernization Funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements under an approved modernization program.

Modernization Program. An IHA's program for carrying out modernization, as set forth in the approved application for modernization funds. See subpart I.

Modernization Project. The improvement of one or more existing Indian housing projects, under a new project number designated for modernization purposes.

Monthly Adjusted Income. One twelfth of adjusted income.

Monthly Equity Payments Account (MEPA). A homebuyer account in the Mutual Help Homeownership opportunity program credited with the amount by which each required monthly payment exceeds the administration charge.

Monthly Income. One twelfth of annual income.

Near Elderly Family. A family whose head or spouse (or sole member) is at least 50 years of age but below the age of 62 years.

Net Family Assets. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles are excluded, and, in the case of a family in which any member is actively engaged in a business or farming operation, the assets that are a part of the business or farming operation are excluded. In cases where a trust fund, such as individual Indian monies held by the BIA, has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. In determining net family assets, IHAs shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Nonroutine Maintenance. (a) For purposes of the Turnkey III Program (Nonroutine Maintenance Reserve), nonroutine maintenance refers to infrequent and costly items of maintenance and replacement, including dwelling equipment such as a range or refrigerator, or major components such as heating or plumbing systems or a roof. Specifically excluded are maintenance expenses attributable to homebuyer negligence or to defective materials or workmanship.

(b) For purposes of CIAP/Modernization Program and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

NRMR. The nonroutine maintenance reserve account in the Turnkey III Program established and maintained in accordance with § 905.519.

Operating Budget. The IHA's operating budget (HUD form 52564) and all related documents, required by HUD to be submitted pursuant to the ACC.

Operating Subsidy. Annual contributions for IHA operations made by HUD under the authority of section 9 of the Act. See subpart J of this part with respect to rental projects. See also § 905.434 (Mutual Help Operating Subsidy) and § 905.523 (Turnkey III Operating Subsidy).

Other Income. Income to the IHA other than dwelling rental income and income from investments, except that, for purposes of determining operating subsidy eligibility, the following items are excluded: grants and gifts for operations, other than for utility expenses, received from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the IHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Performance Funding System. The standards, policies and procedures established by HUD for determining the amount of operating subsidy an IHA is eligible to receive for its owned rental projects, based on the costs of operating a comparable well-managed project.

Program Reservation. A written notification by HUD to an IHA, which is not a legal obligation, but which expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, that HUD will enter into a new or amended ACC covering the stated number of housing units, or such

other number as is consistent with funding reserved by HUD for the project.

Project. The entire undertaking to provide housing as identified in the ACC involved, including all real or personal property, funds and reserves, rights, interests and obligations, and activities related thereto to be developed and operated by an IHA.

Project for Elderly Families. A rental project or portion of a rental project assisted under the U. S. Housing Act of 1937 that was designated for occupancy by the elderly at its inception (and that has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project, or for a portion of the units in the project, to Elderly Families.

Project Units. All dwelling units of an IHA's projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 905.725.

Retail Service. Purchase of utility service by IHA tenants directly from the utility supplier.

Requested Budget Year. The budget year (fiscal year) of an IHA following the current budget year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the IHA requested budget year, which is used to determine the allowable utilities consumption level used to compute the utilities expense level.

Single Person. A person who lives alone or intends to live alone, and who does not qualify as (a) an elderly family, (b) a displaced person (as defined in this section), or (c) the remaining member of a tenant family.

Special Purpose Modernization. A modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

(a) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls and foundations);

(b) Physical improvements to upgrade security, such as installation of additional lighting, security screens on

windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(c) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR Part 8;

(d) Physical improvements to reduce the number of units that are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(e) Cost-effective physical improvements to increase the energy efficiency of the project.

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

Subsequent Homebuyer. Any homebuyer other than the homebuyer who first occupies a home pursuant to an MHO agreement.

Successor Homebuyer. A person eligible to become a homebuyer who has been designated by a current homebuyer to succeed to an interest under a homeownership agreement in the event of the current homebuyer's death or mental incapacity.

Surcharge. The amount charged by the IHA to a tenant, in addition to the Tenant Rent, for consumption of utilities in excess of the allowance for IHA-furnished utilities or for estimated consumption attributable to tenant-owned major appliances or to optional functions of IHA-furnished equipment. Surcharges calculated pursuant to subpart K, based on estimated consumption where checkmeters have not been installed, are referred to as "scheduled surcharges."

Tenant-Purchased Utilities. Utilities purchased by the tenant directly from a utility supplier.

Tenant Rent. The amount payable monthly by the family as rent to the IHA. Where all utilities (except telephone) and other essential housing services are supplied by the IHA, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the IHA and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total Development Cost. The sum of all HUD-approved costs for a project including all undertakings necessary for planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying

charges), and for otherwise carrying out the development of the project. Offsite water and sewer facilities development costs are not included.

Total Tenant Payment. The monthly amount calculated under subpart D of this chapter. Total tenant payment does not include any surcharge for excess utility consumption or other miscellaneous charges (see subpart K).

Tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Unit Months Available. Project units multiplied by the number of months the project units are expected to be available for occupancy during a given IHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the end of the initial operating period for the project is established until the time it is approved by HUD for deprogramming and is vacated or approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities. For purposes of determining utility allowances, utilities include electricity, gas, heating fuel, water, sewerage service, septic tank pumping/maintenance, sewer system hookup charges (after development), and trash and garbage collection. Telephone service is not included as a utility. For purposes of IHA accounting and PFS, trash and garbage collection and maintenance and repair of any systems are considered maintenance expenses and not utility expenses.

Utility Allowance. An allowance for IHA-furnished utilities represents the maximum consumption units (e.g., kilowatt hours of electricity), established in accordance with § 905.810, that may be used by a dwelling unit without a surcharge against the tenant for excess consumption. An allowance for tenant-purchased utilities is a fixed dollar amount, established in accordance with § 905.885, that is deducted from the total tenant payment otherwise chargeable to a tenant who has retail service, whether the charges are more or less than the amounts of the allowance.

Utilities Expense Level. The per-unit per-month dollar amount of utilities expense used in calculation of operating subsidy, as provided in § 905.715.

Utility Reimbursement. The amount, if any, by which the utility allowance for tenant-purchased utilities for the unit, if

applicable, exceeds the family's total tenant payment.

Very Low-Income Family. A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voluntary Equity Payments Account (VEPA). A homebuyer account in the Mutual Help Homeownership Opportunity program credited with the amount of any periodic or occasional voluntary payments in excess of the required monthly payments.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

Work Item. Any separately identifiable unit of work constituting a part of a modernization program.

§ 905.105 Types of lower income housing projects.

IHAs may develop the following types of projects:

(a) **Rental.** In a rental project, the occupants lease units for an initial term acceptable to the IHA and the tenant, followed by a month-to-month tenancy. Projects may be developed with single family detached, duplex, row house, walk-up, garden type, or (for the elderly) elevator structures.

(b) **Mutual Help Homeownership Opportunity.**

(1) **General.** This program (see subpart E) is available only for use by IHAs eligible for assistance under this part. Under this program, a homebuyer enters into an MHO agreement under which the homebuyer agrees to contribute land, labor, cash, materials, or equipment, or a combination of these, for development of the project; make monthly payments based on income; and provide all maintenance of the home. In return, the initial purchase price of the home is reduced each month in accordance with a predetermined purchase price schedule, and the homebuyer is given the right to buy the home by payment of the remaining balance of the purchase price at the time of the purchase. The credit for the homebuyer's Mutual Help contribution is applied against the purchase price of the home.

(2) **Project types.** Single family dwellings are eligible for assistance under this program, including, but not

limited to, single-family detached dwellings and row houses.

§ 905.110 Assistance from Indian Health Service and Bureau of Indian Affairs.

Because HUD assistance under this part is not limited to IHAs of federally recognized tribes, provisions in this part relating to assistance from BIA or IHS, or to required approvals, actions or determinations by these agencies in connection with such assistance, are applicable only to projects undertaken by IHAs of federally recognized tribes or by regional housing authorities created by Alaska state law. These projects shall be developed promptly and operated in accordance with the provisions of the Interdepartmental Agreement. "Federally recognized tribe" means a tribe recognized as eligible for services from BIA or IHS.

§ 905.115 Applicability of civil rights statutes.

(a) **Indian Civil Rights Act.** (1) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301-1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(2) In the case of IHAs established pursuant to State law, determinations by HUD of the applicability of the ICRA on a case-by-case basis may consider such factors as the existence of recognized powers of self-government; the scope and jurisdiction of such powers; and the applicability of such powers to the area of operation of a particular IHA. Generally, determinations by HUD of the existence of recognized powers of self-government and the jurisdiction of such powers will be made in consultation with the Department of Interior-Bureau of Indian Affairs, and may consider applicable legislation, treaties and judicial decisions. The area of operation of an IHA may be determined by the jurisdiction of the governing body creating the IHA, any limitations within the enabling legislation, and judicial decisions.

(3) Projects of IHAs subject to the ICRA shall be developed and operated in compliance with its provisions and all

HUD regulations and handbooks thereunder.

(b) **Nonapplicability of Title VI and the Fair Housing Act.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing do not apply to IHAs established by exercise of a tribe's powers of self-government. HUD regulations implementing title VI and the Fair Housing Act shall not be applicable to development or operation of projects by such IHAs. Any determination by HUD of the applicability of title VI and the Fair Housing Act on a case basis shall consider the applicability of the Indian Civil Rights Act under paragraph (a) of this section. Actions taken by an IHA to implement the statutory admission restriction in favor of Indian families in the MH program, as set forth in § 905.301, shall not be considered a violation of any provision of either title VI or the Fair Housing Act.

(c) **Indian Housing Act of 1988—Mutual Help program admissions.** For provisions generally limiting admission to the Mutual Help Homeownership Opportunity program to Indians and requiring findings of need for admission of non-Indians, see § 905.416.

(d) **Handicap.** For discussion of laws dealing with discrimination on the basis of handicap and with construction accessibility requirements, see § 905.120(f).

§ 905.120 Compliance with other Federal requirements.

(a) **Environmental clearance.** Before approving a proposed development program or modernization project, HUD will comply with the requirements of 24 CFR part 50.

(b) **Flood insurance.** HUD will not approve financial assistance for acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met: flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)); and the community in which the land is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Act (42 U.S.C.

4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the jurisdiction that has authority to adopt and enforce flood plain management regulations for the area, such as an Indian tribe or authorized tribal organization, an Alaska native village or authorized native organization, or a municipality or county.

(c) *Wage rates for laborers and mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (b) of the definition in § 905.102), the IHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276c), to all laborers and mechanics employed by an IHA or its contractors for work or contracts over \$2,000.

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (b) of the definition in § 905.102) on a modernization project, the IHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (after a determination under state, Tribal or local law) by HUD pursuant to section 12 of the United States Housing Act of 1937, to all laborers and mechanics employed by an IHA or its contractors.

(3) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 905.172(b).

(d) *Professional and technical wage rates.* All architects, technical engineers, draftsmen and technicians employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (after a determination under applicable State, Tribal, or local law) by HUD.

(e) *Relocation assistance.* (1) Projects developed by an IHA are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") (42 U.S.C. 4621-4638). Each project shall be developed in compliance with the Uniform Act and HUD policies and requirements thereunder (49 CFR part 24).

(2) Development cost may include the reasonable moving costs for a family which is moved from a project site during construction and is returned to the site after completion.

(f) *Handicap.* (1) Under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), HUD is required to assure that no otherwise-qualified handicapped person

is excluded from participation, denied benefits, or discriminated against under any program or activity receiving Federal financial assistance, solely by reason of his or her handicap. Except for an IHA created by the exercise of a tribe's powers of self-government, IHAs must comply with implementing instructions in part 8 of this title 24.

(2) The IHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), and HUD implementing regulations (24 CFR part 40).

(g) *Access to records; audits.* HUD and the Comptroller General of the United States shall have access to all books, documents, papers, and other records that are pertinent to the activities carried out under this part, in order to make audit examinations, excerpts, and transcripts, in accordance with 24 CFR 85.42. An IHA receiving assistance under this part must comply with the audit requirements of 24 CFR part 44, issued in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7507).

(h) *Uniform administrative requirements.* The Uniform Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal governments, as set forth in 24 CFR part 85, are applicable to grants under this part, except as specified in this part.

(i) *Lead based paint poisoning prevention.* See 24 CFR part 35 and subpart H of this part.

§ 905.125 Establishment of IHAs pursuant to State law.

An IHA may be established pursuant to a State law that provides for the establishment of IHAs with all necessary legal powers to carry out lower income housing projects for Indians.

§ 905.126 Establishment of IHAs by tribal ordinance.

(a) *Legal capacity of tribe to establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(b) *Form of ordinance.* A tribal ordinance establishing an Indian Housing Authority shall be in a form prescribed by HUD. No substantive change may be made in the form of tribal ordinance except with specific written approval from the Assistant Secretary for Public and Indian Housing.

(c) *Approval or review of ordinance by the Department of the Interior.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD, accompanied by evidence that the tribe's enactment of the ordinance either has been approved by the Department of the Interior or has been reviewed and not objected to by that Department.

(d) *Amendment of ordinance.* Tribal ordinances not conforming to current HUD regulations, contracts, and handbooks shall be amended as promptly as possible. No contract or amendment providing any additional commitment for HUD financial assistance shall be entered into unless such conforming amendments have been enacted.

(e) *Submission to HUD of documents establishing IHA.* The tribal ordinance, evidence of Department of the Interior approval or review, and the following documentation relating to the initial organization of the IHA, in the form prescribed by HUD, shall be submitted to HUD before or with any application for financial assistance:

(1) Certificate of appointment of Commissioners;

(2) Commissioner's oath of office;

(3) Notice of organization;

(4) Consent to meeting;

(5) Minutes of meeting;

(6) Resolutions establishing the IHA, adopting the by-laws, adopting the seal, designating a regular place of meeting, and designating officers;

(7) By-Laws;

(8) Certificate of Secretary as to authenticity of documents; and

(9) General Certificate of Housing Authority.

§ 905.130 IHA commissioners who are tenants or homebuyers.

(a) *Tenant or homebuyer commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he or she is a tenant or homebuyer in a housing project of the IHA. A Commissioner who is a tenant or homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a tenant or homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations, or status as a tenant or homebuyer.

(b) *Commissioner as IHA employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA, except under extremely unusual circumstances where it is documented that no one except the Commissioner is qualified for the position and where HUD approves.

§ 905.135 Administrative capability.

(a) *obligation to maintain.* An IHA must maintain administrative capability, as defined in § 905.102, at all times throughout the term of the ACC. In accordance with 24 CFR part 85, which is applicable to recipients of HUD grants that are "local governments"—defined to include Indian Housing Authorities, any IHA determined to be "high risk" may be subject to special conditions or restrictions.

(b) *Evaluation.* On the basis of regular monitoring, on-site reviews, audits, surveys, and the formal Administrative Capability Assessment process, HUD will evaluate the administrative capability of each IHA at least annually to determine whether the IHA maintains administrative capability. In making this determination, HUD will evaluate an IHA's compliance in the areas of development, modernization, and operations, including such functions as administration, financial management, occupancy, and maintenance.

(c) *Criteria.* HUD will categorize an IHA as lacking administrative capability if it determines that one or more of the following conditions exist or if other serious conditions are discovered: The IHA—

(1) Has a history of unsatisfactory performance over at least the past two annual assessment periods;

(2) Is not financially stable, based on the most recent Administrative Capability Assessment, annual audit, technical assistance visit, or other reliable information;

(3) Has not had a complete independent audit of its operations in the past twenty-four months;

(4) Has management systems that do not meet the standards as set forth in part 85, and the lack of this system may result in mismanagement or misuse of Federal funds;

(5) Has not conformed to the terms and conditions of previous awards, including for new construction, the Comprehensive Improvement Assistance Program or the use of Operating Subsidies;

(6) Lacks properly trained and competent personnel at key management positions of the IHA;

(7) Is not or has not complied with the terms of applicable regulations, Annual

Contributions Contracts or handbooks; or

(8) Is otherwise not responsible.

(d) *Notice of deficiency.* If HUD determines that an IHA lacks administrative capability, it will notify the IHA as soon as possible after the completion of the review upon which the determination was based. The notification will be in writing and will contain the following:

(1) The reasons for the determination;

(2) The nature of any HUD action taken as a result of the determination;

(3) The corrective action(s) that must be taken by the IHA and the time allowed for completing the corrective actions;

(4) The method of requesting reconsideration of the HUD action and the documentation necessary for evidence that all corrective actions have been completed; and

(5) If the HUD action will affect funding in an upcoming cycle, any interim requirements (short of completing all necessary actions) to be satisfied as a condition of eligibility.

(e) *Management improvement plan.*

(1) When an IHA is informed that it has been determined to lack administrative capability, it must respond to the determination, in writing. This response must include a management improvement plan to achieve administrative capability through the correction of existing deficiencies. The plan shall describe in detail the method to be used and the time schedule to be maintained and it will be subject to HUD approval.

(2) If the IHA does not satisfy the terms of the plan or does not act in good faith to meet the timeframes included in its management improvement plan, additional restrictions may be imposed, as necessary, future or pending applications for assistance may be denied, existing projects may be terminated, or other action may be instituted, as appropriate.

(f) *High risk IHAs.* (1) An IHA's application for assistance may be approved despite a finding that it lacks administrative capability—subject to special conditions and/or restrictions corresponding to the deficiencies found—if it has submitted a management improvement plan that was approved by HUD, and it has exhibited substantial compliance with the plan or a good faith effort to comply with the plan. An IHA in these circumstances shall be classified as "high risk" and may be subject to one or more of the following special conditions or restrictions for the development and/or operation of the affected project:

(i) Submission to HUD of additional documentation on all payments made by the IHA;

(ii) Suspension of the development or modernization process until evidence of compliance on previous requirements is provided;

(iii) Submission to HUD of additional or more detailed financial reports;

(iv) Additional project monitoring from the HUD field office;

(v) Requiring the IHA to obtain technical assistance from HUD or another entity approved by HUD;

(vi) Suspension of various expenditures for non-essential functions; or

(vii) Establishing additional approvals by HUD.

(2) If HUD determines that it is necessary to impose special conditions or restrictions, it will notify the IHA in writing. The notice shall contain the information specified in paragraph (d) of this section. If the information to be provided under this paragraph (f) is identical to that provided under paragraph (d), no separate notice is required.

(g) *Appeals.* (1) An IHA may appeal a determination that it lacks administrative capability, the imposition of special conditions or restrictions, or any other HUD field office action, to the HUD regional administrator. All appeals must be made in writing, within 30 days of notice to the IHA of the HUD action and must state clearly any justification or evidence that the action is unwarranted or too severe. If an appeal is filed concerning one or more action(s), the action(s) shall not take effect until HUD makes a final determination on the appeal or notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action. The HUD regional administrator must respond to the appeal within a reasonable time.

(2) An IHA may appeal a regional administrator's decision to the Assistant Secretary only if the case involves actions related to restrictions on funding for the upcoming funding cycle. An appeal of the regional administrator's decision must be made in writing, stating the justification or evidence, and must be submitted to the Assistant Secretary in accordance with procedures established in HUD procedural instructions. Decisions reviewed by the Assistant Secretary will be evaluated based on the facts as presented to the regional administrator and on any aggravating or extenuating circumstances.

(h) *Superior performance.* HUD may establish levels for superior

performance for IHA awards, special initiatives, or participation in other program benefits.

(Information collection requirements contained in paragraphs (e), (f), and (g) of this section have been approved by the Office of Management and Budget under OMB control number 2577-0130)

§ 905.140 Certification of housing managers.

(a) *Purpose and scope.* This section establishes a requirement for the certification of executive directors and housing managers and provides for this certification by approved certifying organizations. The requirements set forth in this section are applicable to all lower income housing projects assisted under the Act that are owned by IHAs and to all IHAs administering these projects.

(b) *Certification.* (1) Full certification is granted a housing manager by an approved certifying organization when the organization determines that the person has demonstrated the ability to achieve and/or maintain the essential social, fiscal, environmental, equal opportunity, and administrative goals of the Indian housing program established under the Act, the annual contributions contract, and HUD regulations for the management of Indian housing projects.

(2) Probationary certification is granted to a person who has not met the qualifications for full certification when hired, but who has the potential to qualify. The initial term of probationary certification is one year. The approved certifying organization may extend the term of the probationary certificate for one additional year in order to allow the applicant sufficient time to obtain a certificate. In no case may the probationary certificate be in effect for longer than two years.

(3) Before January 1, 1981, approved certifying organizations were permitted to issue a certification solely on the basis of satisfactory on-the-job performance in the housing management field for not less than 4 years. Certification on this basis is valid only if it was granted before that date.

(c) *HUD approval of certifying organizations.* (1) Any national housing management organization may apply to HUD for approval for the purpose of providing certification of individuals as housing managers. HUD's Certification Review Committee will evaluate applicant organizations upon their past performance in the field of Indian housing management and compliance with HUD's nondiscrimination policies, Indian preference, and the suitability of the programs submitted. Every applicant

shall submit to HUD appropriate evidence that such organization:

(i) Has the experience and capacity to deal with lower income Indian housing management processes with significant emphasis on housing projects assisted under the Act or assisted under other Federally or State-assisted programs;

(ii) Has developed a certification program which includes:

(A) Specific criteria and standards for qualifying for certification in accordance with paragraph (c)(6) of this section;

(B) Suitable procedures which will afford any person the opportunity to apply for certification and receive certification if he or she meets the standards;

(C) A right of appeal as set forth in paragraph (i) of this section; and

(D) Suitable procedures which provide for a probationary certificate.

(2) The HUD Certification Review Committee shall evaluate the evidence submitted by the organization in accordance with paragraph (c)(1) of this section and will determine in its discretion, on the basis of that evidence and such other material as may be relevant, whether the qualifications of the organization meet the criteria set forth in paragraph (c)(1) of this section. If the qualifications are satisfactory, HUD shall notify the organization of its approval as a certifying organization.

(3) In the event HUD denies approval of the organization, the notification to the organization shall set forth the reasons for HUD's action in sufficient detail so as to enable the organization to request reconsideration of the determination.

(4) The standards, criteria and program for enabling persons to qualify for certification shall be subject to periodic review and reapproval or disapproval not less than annually by the HUD Certification Review Committee. Such periodic review shall include the procedures and methods by which the organization incorporates in its training, evaluation and certification program the current regulations, policies and procedures of HUD as well as due process protection for the persons certified or applying for certification.

(5) A current list of approved certifying organizations and their standards and criteria shall be published in the *Federal Register* as organizations are approved or reapproved by HUD as certifying organizations, and shall be sent to all IHAs in the form of a notice.

(6) All criteria and standards for qualifying for certification shall be reasonably related to job requirements. The assessment method used to determine whether an individual is

qualified for certification (e.g., written examination) shall be based on and relate to a valid analysis of the tasks performed by Indian housing managers and shall be fair, objective, and free of ethnic and cultural bias. HUD approval of assessment methodology may be granted on the basis of a written statement by an organization or individual acceptable to HUD as being qualified in the field of assessment methodology.

(7)(i) Immediately upon receiving notification from HUD that its application to become an approved certifying organization has been approved, and no longer than 60 days following that notification, an approved certifying organization may submit to HUD a list of all individuals who already possess a certification from the organization provided:

(A) The certification is reasonable evidence that the certificate holder is qualified as a housing manager, and

(B) The certification is currently recognized by the approved certifying organization at the time the list of names is tendered to HUD.

(ii) Upon receiving this list, HUD will notify the approved certifying organization that the certifications issued to the listed individuals may be considered as satisfying the certification requirements of this section.

(d) *Requirements for certification.* Any person employed as a housing manager of dwelling units shall be required to have certification as a housing manager (either full certification or an unexpired probationary certification) from an approved certifying organization.

(e) *Salaries of housing managers.* Beginning with the budget submitted to HUD for the first fiscal year which starts at least four months after the date on which certification is required for any housing manager, the salary of such any housing manager who has not obtained certification (as described in paragraph (d) of this section) shall not be considered an eligible operating expenditure (whether or not operating subsidy is required), nor shall such salary be approved as a budget item for the purpose of operating subsidy eligibility. However, these prohibitions shall not apply during the pendency of an appeal filed pursuant to paragraph (i) of this section. Beginning with that same fiscal year and thereafter, the current certification status of all housing managers shall be submitted by IHAs to HUD along with the annual budget.

(f) *Compliance with civil service law and notice of termination procedures.* If a housing manager is denied

certification or certification is suspended or withdrawn and the person no longer has any appeal pending under this part, the allowance of any salary as an approvable budget item shall terminate, except for such period as may necessarily be involved in compliance by the IHA with notice of termination and related procedures pursuant to State or Tribal law or the IHA's approved personnel practices. Nor shall the allowance of the salary as an approvable budget item terminate if it should be determined as a result of administrative and/or judicial proceedings that under applicable civil service or other State or Tribal laws that the official's services may not be legally terminated on grounds of his failure to obtain certification under this part.

(g) *Costs of certification and related training.* The reasonable costs incurred by an IHA for certification of an IHA employee as a housing manager (whether or not the certification is required under this part), including training to enable an IHA employee to qualify for such certification, shall be allowable as eligible expenditures for an IHA. The IHA may, at its discretion, include a provision for payment of such costs in its operating budget.

(h) *Denial, revocation or suspension of certification.*

(1) *Grounds for denial, revocation or suspension of certification.* Certification may be denied, revoked or suspended by the approved certifying organization which granted the certification, by its successor, or by HUD, for the following:

- (i) Acts of fraud, deceit or misrepresentation in obtaining the certification;
- (ii) Acts of gross negligence, incompetency or misconduct in carrying out the duties of housing manager;
- (iii) Conviction of a crime involving moral turpitude; or
- (iv) Willful disregard of the regulations and requirements applicable to the Indian housing program.

(2) *Notice by the approved certifying organization.* The approved certifying organization shall serve a written notice on the certified person that denial, revocation or suspension is being considered and shall set forth in the notice with reasonable specificity the reasons for the proposed action. Said notice shall also advise the certified person that he has a specified number of days from receipt of the notice, to respond in writing or to request an informal hearing. If the certified person does not respond within the specified period, the approved certifying organization may revoke or suspend the certification and shall immediately so

advise the certified person, the IHA and HUD.

(3) *Presentation of evidence by certified person and determination by the approved certifying organization.* The certified person may examine and, at his expense, copy all documents, records and regulations of the approved certifying organization that are relevant to the matter. The certified person shall have the right to present evidence and arguments in opposition to the proposed revocation or suspension and to controvert evidence relied on by the approved certifying organization and he or she may elect to do this in writing, or at the informal hearing, or both. Whenever a certified person requests an informal hearing, he or she shall be entitled to confront in a reasonable manner and cross-examine all witnesses on whose testimony or information the approved certifying organization relies. Evidence pertinent to the issues in the approved certifying organization's notice may be received and considered without regard to its admissibility under rules of evidence employed in judicial proceedings. Upon considering all evidence and arguments presented, the approved certifying organization shall determine whether certification should be revoked or suspended and shall promptly advise the certified persons of its determination. Testimony shall be recorded in some form and such records shall be maintained for a period of not less than 90 days. Whenever the approved certifying organization's decision is to revoke or suspend certification, the notice shall set forth with reasonable specificity the organization's findings. A decision to revoke or suspend certification shall not preclude the approved certifying organization from making subsequent determination that a certified person should be reinstated.

(4) Either the IHA or the housing manager may appeal the determination made by the approved certifying organization pursuant to this section, in accordance with paragraph (i) of this section.

(i) *Appeal.* (1) Any person required to hold certification as a housing manager and who is denied certification or whose certification has been revoked or suspended by an approved certifying organization, may, at his or her option, file an appeal with the approved certifying organization.

(2) The appellant shall have the right to request a hearing. If a hearing is requested, it shall be one at which he or she is represented or accompanied by a person of his or her choice. The appellant shall be afforded an

opportunity to present oral testimony and to cross-examine witnesses.

(3) The approved certifying organization shall consider the appeal on the record and on the basis of the evidence presented. The appellant and the person who originally denied certification shall have the right to add to the record affidavits, testimony, or relevant information in support of the certification or in support of the denial, suspension, or revocation of certification. As promptly as possible (generally within 90 days from the filing date of the appeal), the approved certifying organization shall render the decision on the appeal which states the reasons for the decision. A copy of the decision shall be furnished to the appellant and to HUD.

(4) All materials filed or submitted in regard to an appeal under this section shall be maintained for not less than 90 days following the date of the decision and shall be available for public inspection to the full extent of the law.

(Information collection requirements contained in paragraph (c)(1) of this section have been approved by the Office of Management and Budget under OMB control number 2577-0077)

Subpart B—Procurement

§ 905.160 - Procurement standards.

(a) *HUD standards—(1) Applicability.* This subpart sets forth Federal requirements to be followed by IHAs in the procurement of services, supplies, and goods.

(2) *Contracting authorization.* An IHA may execute contracts without HUD approval for the procurement of work, materials, equipment and/or professional services, in accordance with paragraph (a)(3)(iii) of this section, unless the IHA has been determined to be "high risk", in accordance with 24 CFR part 85 and § 905.135. When HUD prior approval is not required, the IHA will certify that program requirements have been satisfied before it executes a contract. HUD will monitor IHA performance of this function, and may at any time require prior approval or require additional training of IHA staff, in accordance with 24 CFR part 85 and § 905.135.

(3) *Limitations.* (i) An IHA shall not award a contract for the project until the prospective contractor has demonstrated, to the satisfaction of the IHA, the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the contract. The IHA shall not award a contract to a person or firm on the List

of Parties Excluded from Federal Procurement and Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA). The persons listed have been debarred, suspended, or determined ineligible for participation in Federal programs. (See 24 CFR part 24.)

(ii) The IHA shall submit for HUD approval complete construction and bid documents before inviting bids, or certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved construction or repairs, and that the bid documents are complete and include all mandatory items. The IHA shall obtain HUD approval of the proposed award of contracts for repairs, construction, and/or related equipment if the bid amount exceeds the HUD-approved budget amount or the IHA receives only a single bid. In all other instances, the IHA shall comply with HUD requirements either to submit the proposed award for HUD approval, or if authorized to proceed without specific HUD approval, to make the award after the IHA has certified

(A) that the bidding and awarding procedures were conducted in compliance with State, tribal, or local laws and Federal requirements, including requirements for Indian preference and wage rates;

(B) that the award does not exceed the approved budget amount and is not being made on the basis of a single bid; and

(C) that HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(iii) Unless an IHA has been limited with respect to its procurement and management functions in accordance with part 85 and § 905.135, the IHA may execute, or approve any agreement or contract for personal, management, legal, or other services with any person or firm without the prior written approval of HUD, except under the following circumstances:

(A) Where the term of the agreement or contract (including renewal) is in excess of two years; or

(B) Where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget, or operating budget or an amount specified from time to time by HUD, as the case may be; or

(C) Where the agreement or contract is for legal or other services in connection with litigation.

(4) *Records.* An IHA shall maintain records sufficient to detail the significant history of a procurement.

(5) *Contract administration.* An IHA is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement.

(6) *Competition.* All procurement transactions must be conducted in a manner providing full and open competition.

(7) *Contract cost and price.* An IHA must perform a cost or price analysis in connection with every procurement action, including contract modifications.

(b) *IHA Standards—(1) IHA procedures.* Each IHA shall adopt, promulgate, and comply with, rules or regulations for the procurement and administration of supplies, materials, services and equipment in connection with the development and operation of projects. The IHA will promptly furnish a copy of these rules or regulations to HUD. These rules or regulations shall contain provisions on at least the following subjects:

(i) Procedures for procurement in cases where competitive bidding is required, including written selection procedures;

(ii) Identification (by position title) of IHA officials authorized to procure goods and services when competitive bidding is not required, and procedures for such procurement;

(iii) Procedures for inventory control;

(iv) Procedures for storage and protection of goods and supplies;

(v) Procedures for issuance of, or other disposition of, supplies and equipment;

(vi) Procedures for implementing Indian preference requirements;

(vii) Procedures for handling complaints and protests regarding procurement;

(viii) Standards of conduct governing IHA directors, officers and employees; and

(ix) Conflict of interest provisions governing directors, officers, employees, contractors/developers and others doing business with the IHA.

(2) *Contract administration system.*

An IHA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

(Information collection requirements contained in paragraphs (a)(3)(ii) and (a)(4) of this section have been approved by the Office of Management and Budget under

OMB control numbers 2577-0039 and 2577-0130, respectively)

§ 905.165 Indian preference

(a) *Applicability.* HUD has determined that projects under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (For applicability to an IHA's own employment practices, see 905.360.) Section 7(b) provides that any contract, subcontract, grant or subgrant entered into for the benefit of Indians shall require that, to the greatest extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or subcontracts be given to "Indians". That Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) *Preference requirements in procurement*—(1) *Preference by contractors and subcontractors.* The methods of procurement set forth in this subpart incorporate procedures for implementing preference for Indians, Indian-owned economic enterprises, and Indian organizations in contracting, subcontracting, training, and employment.

(2) *Preference by IHAs.* (i) To the greatest extent feasible, IHAs shall, in the conduct of their own operations, adhere to the requirements regarding preference in contracting. Where the provision of preference is determined by an IHA to be infeasible, the IHA shall document in writing the basis for its findings, shall maintain for three years the documentation in its files for HUD review, and shall provide HUD with a copy of the determination within 20 days of its issuance.

(ii) To the greatest extent feasible, preference shall be given to qualified Indians for employment or training for IHA staff positions. Each IHA shall document the method and justification used in selecting individuals for employment or training. A finding by HUD that an IHA has not provided preference to the greatest extent feasible to Indians in selecting individuals for employment or training shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects, as discussed in § 905.135.

(c) *Other preference requirements*—(1) *Use of non-Federal funds.* When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian preference regulations must be applied to the work financed by HUD. If the funds cannot be separated, HUD's Indian preference regulations will apply to the total project.

(2) *Monitoring.* Each IHA shall be responsible for monitoring Indian preference implementation in its contracting, subcontracting, employment, and training. Should incidents of noncompliance be found to exist, the IHA shall take appropriate remedial action. A finding by HUD that the IHA has not provided adequate monitoring or enforcement of Indian preference may result in a determination by HUD that the IHA is in breach of the ACC or that the IHA lacks administrative capability. Such a finding may constitute grounds for HUD to invoke its remedies under this part or under the ACC, which remedies shall include, but are not limited to, the denial

of future projects, as discussed in § 905.135.

(3) *Off-site activities.* Preference in contracting, subcontracting, employment, and training applies not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(4) *Locally-imposed requirements.* Each IHA should include in the Invitation For Bids (IFB) or Request For Proposals (RFP) any applicable locally imposed preference requirements properly enacted by the tribal governing body, as adopted by the IHA and approved by HUD, or should advise bidders to contact the tribal governing body to determine any applicable preference requirements. However, in no case may an IHA authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on particular tribal affiliation or membership.

(5) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968, each IHA shall, to the greatest extent feasible, afford preference in contracting, training, and employment to lower income area residents. When the cost of a procurement is estimated to exceed \$500,000, the IHA must include in the IFB or RFP a statement that, "to the greatest extent feasible, opportunities for training and employment [are to] be given lower income residents of the project area and contracts for work in connection with the project [are to] be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project." For this purpose, the project area is usually defined as the Indian reservation. See 24 CFR part 135.

(d) *Required contract clause.* The following language shall be included in any contracts or subcontracts in connection with development or operation of IHA projects:

Section 7(b) Clause

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-Determination and Education

Assistance Act (25 U.S.C. 450e(b) and all HUD requirements adopted pursuant to section 7(b)).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to this contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

(e) Eligibility for Indian preference.

(1) An applicant seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership to the IHA or contractor. Proof of Indian ownership shall include, but shall not be limited to:

(i) Certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs shall accept the certification of a tribe that an individual is a member.

(ii) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(2) An applicant seeking to qualify for preference in employment and training shall submit, to the IHA or contractor, certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs and contractors shall accept the certification of a tribe that an individual is a member.

(3) An applicant seeking a contract or a subcontract shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant has the technical, administrative, and financial capability to perform contract work of the size and type involved, and within the time provided, under the proposed contract. An applicant seeking employment and training shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant possesses the qualifications required for employment or training.

(4) An IHA may state in its solicitation that bidders must submit evidence of eligibility within a specified time period before a scheduled bid opening.

(5) An IHA may use lists of pre-qualified Indians, Indian enterprises, or Indian organizations, provided that the IHA does not preclude potential bidders

from qualifying during the solicitation period.

(6) If an IHA or contractor determines that an applicant is ineligible for Indian preference, the IHA or contractor shall so notify the applicant in writing before the award of the contract or before filling the position or providing the training sought by the applicant.

(f) *Review procedures for complaints alleging inadequate or inappropriate provision of preference.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this subpart, including alternate methods enacted and approved in the manner described in this subpart.

(1) Each complaint (including complaints against an IHA shall be in writing, signed, and filed with the IHA. Complaints may be filed only by a person or business entity claiming to have been adversely affected by the actions or inactions of an IHA, a contractor or subcontractor in connection with the provision of preference to Indians in contracting, subcontracting employment or training.

(2) A complaint must be filed with the IHA no later than 20 days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, acknowledge its receipt in writing to the complainant within five (5) days, and shall investigate, and within 15 days shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the IHA shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found to exist, the IHA shall take appropriate steps to remedy the noncompliance and, if necessary, to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party, or if the IHA has failed to communicate with the complaining party in an effort to resolve the complaint within 15 days following the IHA's receipt of a complaint, the complaining party may file a written complaint with the appropriate Indian Field Office of HUD. In any event, complaints filed with HUD must be received within six months after the occurrence of the alleged adverse action by the IHA, contractor or subcontractor. The address of the Indian Field Office

and the name of the appropriate Indian program officer shall be included in the initial communication from the acknowledging receipt of the complaint.

(4) Upon receipt of a written complaint, the HUD Indian Field Office will request that the IHA provide a written report setting forth all relevant facts, including, but not limited to: (A) The date the complaint was filed with the IHA; (B) the name of the complainant; (C) the nature of the complaint, including the manner in which Indian preference was or was not provided; and (D) actions taken by the IHA in addressing or resolving the complaint. The IHA shall provide copies of its report and all relevant documents concerning the complaint to HUD within ten days after receipt of the HUD request.

(5) Upon receipt of the IHA's report, the HUD Indian Field Office will determine whether the actions taken by the IHA comply with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act, and with Indian preference requirements under this part. Notification of the Field Office's determination shall be provided to the IHA and to the complaining party, orally or in writing, no later than 30 days following HUD's receipt of the complaint. If the notice is oral, it shall be promptly confirmed in writing. If the complaining party's alleged injury will occur during this 30-day period, the HUD Indian Field Office will make a good faith effort to make its determination before the occurrence of such injury (e.g., contract award).

(6) Where the HUD Indian Field Office determines on the basis of the facts provided by the IHA and on the basis of other available information that there has been noncompliance with Indian preference requirements, the Field Office shall instruct the IHA to take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance.

(7) The decision of the HUD Indian Field Office may be appealed to the Assistant Secretary for Public and Indian Housing. The decision of the Assistant Secretary for Public and Indian Housing shall constitute final agency action for purposes of the Administrative Procedure Act.

(Approved by the Office of Management and Budget under control number 2577-0076)

§ 905.170 Other requirements applicable to development contracts.

(a) *Bonding requirements.* Each contractor shall be required to provide adequate assurance of performance and payment acceptable to HUD.

(1) The HUD field office may approve use of any of the following methods to provide this assurance:

(i) Performance and payment bond for 100 percent of the total contract price.

(ii) Deposit with the IHA of a cash escrow of not less than 20 percent of the total contract price, subject to reduction, with the approval of HUD during the warranty period commensurate with potential risk.

(iii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the IHA, subject to reduction, with the approval of HUD, during the warranty period commensurate with potential risk.

(iv) Letter of credit for 10 percent of the total contract price and compliance with the procedures for monitoring of disbursements by the contractor, as approved by HUD.

(2) In the case of a Mutual Help project, the term total contract price as used with respect to each of the above assurance methods includes the value of all Mutual Help contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract work.

(3) The bidding documents shall fully set forth all elements of the approved method, or approved alternative methods, for providing assurance of performance. After award of the contract, and within ten days after the prescribed contract forms are presented for signature, the successful bidder shall furnish to the IHA the assurance required under the method to be used.

(b) *Executive Order 11246 (equal employment opportunity).* (1) Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (30 FR 12319), as amended by Executive Order 12319, as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR part 130; 41 CFR chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin.

(2) Compliance with E.O. 11246, and related regulations, orders and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.

(Approved by the Office of Management and Budget under approval number 2577-0130)

§ 905.172 Wage rates.

(a) *Determination of prevailing wage rates.* For the applicable method of determination of the prevailing wage rates to be paid laborers and mechanics, see § 905.120(c).

(b) *Preemption of prevailing wage rates.* (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the development, maintenance or modernization of a project whenever:

(i) The contract or the work item is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and is for a project assisted with funds for lower income housing under the Act; and

(ii) The wage rate (the basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, or improvement of a project exceeds whichever of the following Federal wage rates is applicable:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(D) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(2) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate:

(i) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and

(ii) Where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(3) Whenever paragraph (b)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for development, maintenance or modernization of the project shall include a statement as prescribed in this paragraph and failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal. The statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract must be included whenever either of the following occurs:

(A) Such nonfederal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(2) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency, or

(3) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(B) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(ii) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section to any of its own employees who may be engaged in the development, maintenance or modernization of the project; and

(iii) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for development, maintenance or modernization of the project.

(4) Nothing in this paragraph (b) shall affect the applicability of any wage rate established in a collective bargaining

agreement with an IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (b)(1)(ii) of this section, nor does this paragraph (b) impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(5) The provisions of this paragraph (b) shall apply to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

§ 905.175 Methods of procurement.

(a) *General.*

(1) *Method of providing Indian preference.* This section outlines specific methods an IHA must follow in the procurement of services, supplies and other property. These methods provide, to the greatest extent feasible, preference to Indian organizations and Indian-owned economic enterprises in contracting and subcontracting, and to Indians in employment and training. If a tribal governing body enacts an alternate method of providing Indian preference within its jurisdiction and the Secretary approves the alternate method as meeting the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act for use in the HUD-assisted Indian housing program, the IHA under that jurisdiction must implement the alternate method in lieu of the methods specified in this section. (For purposes of this section, "tribal governing body" means the governing body of an Indian tribe, as defined in § 905.102, which exercises powers of self-government and is Federally recognized.) Alternate methods that provide for a tribal preference will not be approved. HUD's review of alternate methods of providing preference will include the extent to which the proposed method minimizes the risk of nonperformance, promotes competition, assures cost containment, reduces administrative burdens and furthers local priorities and objectives while providing effective Indian preference.

(2) *Requirements applicable to all contracting.*

(i) In all cases, the IHA shall include in the Invitation For Bids (IFB) or Request For Proposals (RFP) a description of the contract and subcontract bidding procedures which are to be employed. A finding by an IHA either that a subcontract was awarded without using the procedure required by

the IHA, or that the contractor falsely represented that subcontracts would be awarded to Indian enterprises or organizations, shall be grounds for termination of the contract between the IHA and its contractor, or for other penalties as appropriate. These grounds for termination of the contract or for the imposition of other penalties shall be set out in the IFB or RFP and shall be included in each contract and subcontract.

(ii) Each IFB and RFP shall state whether the IHA maintains lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to developers, contractors, and subcontractors to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

(iii) The IHA shall require a statement from all prospective contractors or developers describing how they will provide Indian preference in the award of subcontracts. Each IHA shall describe in its IFB or RFP (A) what provisions each prospective developer or contractor must include in its statement and (B) the factors that will be used by the IHA in judging the statement's adequacy. Any bid or proposal that fails to include the required statement shall be rejected as nonresponsive. An IHA may require that a comparable statement be provided by subcontractors to their contractors, and may require a contractor to reject any bid or proposal by a subcontractor that fails to include the statement, as specified by the IHA in the IFB or RFP.

(iv) Each contractor or subcontractor shall submit a certification (supported by credible evidence) to the IHA in any instance where the contractor or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The IHA may examine the evidence submitted and may accept or reject the certification.

(b) Small purchase procedures.

(1) *General.* As an alternative to the procurement procedures specified in paragraphs (c), (d) and (e) of this section, this paragraph provides for simplified, informal procurement methods applicable to an IHA's procurement of services, supplies or other property that do not cost more than \$25,000 in the aggregate (paragraph (2)) or for procurement of property that does not cost more than \$2,000 (paragraph (3)).

(i) The provisions of § 905.165 concerning Indian preference apply to small purchase procedures, except as otherwise specified in this section. In

providing preference, an IHA shall seek maximum participation by Indian-owned economic enterprises and Indian organizations and shall to the extent available, refer to lists of qualified Indian supply sources.

(ii) The IHA shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training and employment and shall specify the method to be used.

(iii) An IHA must document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the IHA must also include as part of its documentation a statement explaining the reasons for the lack of Indian participation.

(2) *Methods of procurement—\$25,000 or less.* For purchases aggregating no more than \$25,000, an IHA may use the methods set forth in this paragraph or the more formal procedures set forth in paragraphs (c) and (d).

(i) *Solicitation.* (A) An IHA may solicit quotations by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of the item to be procured with sufficient specificity, of the time within which quotations must be submitted, and of the information that must be submitted with each quotation. Quotations must be obtained in writing.

A written quotation may include a confirmation of a previous oral quotation only if it is submitted within ten days of the oral quotation, or by the closing date for submitting quotations, as determined by the IHA.

(B) An IHA shall attempt to obtain quotations from a minimum of three qualified sources in order to promote competition to the maximum extent practicable. Fewer than three quotations is acceptable when the IHA has attempted but has been unable to obtain a sufficient amount of competitive quotations. In unusual circumstances, the IHA may accept the sole quotation received in response to a solicitation. In all cases, an IHA shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the contract is to be awarded based upon price and fixed specifications, the IHA shall award the contract to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified

Indian-owned economic enterprise or organization is within 10 percent of the quotation of the lowest responsive quotation from any qualified source, award shall be made to the source with the lowest quotation.

(B) Where the contract is to be awarded based on factors other than price, the IHA shall issue a request for proposals/quotations by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each proposal/quotation. The solicitation shall identify all factors to be considered, including price or cost. The IHA shall set aside 15 percent of the total number of available rating points for the provision of Indian preference. Award shall be made to the best proposal/quotation, as determined under the rating system.

(3) *Methods of procurement—\$2,000 or less.* For purchases aggregating \$2,000.00 or less, an IHA shall follow the procedures under paragraph (b)(2) of this section (Methods of procurement—\$25,000 or less), except that: (i) Oral quotations are acceptable, subject to documentation by the IHA; and (ii) the IHA may develop alternative methods of providing Indian preference, which must be in writing, must promote maximum participation by Indian organizations and Indian-owned economic enterprises, and must be approved by HUD.

(c) *Procurement by sealed bids (Invitations for Bid).* (1) Preference in the award of contracts and subcontracts that are let under a sealed bid/ Invitation for Bids (IFB) process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

(i) The IFB may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The IFB should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or organizations are likely to submit responsive bids. If two or more (or at the IHA's option, a number greater than two specified in the IFB) qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned economic enterprises or organizations submit responsive bids, the IHA shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section. In unusual circumstances and subject to

HUD approval, the IHA may accept a single bid, e.g., the IHA determines that the single bid received is of a fair and reasonable price, or the IHA determines that delays caused by readvertising would subject the project to higher construction costs, or the IHA determines that the bid is fair and reasonable.

(ii) If the IHA prefers not to restrict the IFB as described in paragraph (c)(1)(i) of this section; or if an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i); or if a single bid is not accepted and approved; the IHA or contractor shall advertise for bids inviting responses from non-Indian as well as Indian-owned economic enterprises and Indian organizations. Award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid if that bid

(A) Is within the maximum total contract price established for the specific project or activity for which bids are being taken, and

(B) Is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder.

"X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than \$100,000.	10% of that bid, or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000.	9% of that bid, or \$18,000.
At least \$200,000, but less than \$300,000.	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000.	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000.	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million.	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million.	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million.	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million.	2% of that bid, or \$105,000.
\$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(d) *Procurement by competitive proposals (Request for Proposals).* (1)

Preference in the award of contracts and subcontracts that are let under competitive proposals/Request for Proposals (RFP) process (e.g., for turnkey proposal construction contracts, professional service contracts) shall be provided as follows:

(i) The RFP may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The RFP should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or Indian organizations are likely to submit responsive proposals. If two (or, at the IHA's option, a number greater than two specified in the RFP) qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal. If fewer than the minimum required number of qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, the IHA shall reject all proposals and shall readvertise the RFP in accordance with paragraph (d)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the IHA may accept a proposal that is the only one received, e.g., where the IHA determines that delays caused by readvertising would cause higher costs, or where the IHA determines that the proposal is fair and reasonable. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the IHA places on each evaluation factor and subfactor. The award shall be made to the qualified Indian-owned economic enterprise or Indian organization that has submitted the most responsible proposal if the proposal is within the maximum total contract price established for the specific project or activity.

(ii) If the IHA prefers not to restrict the RFP solicitation as described in paragraph (d)(1)(i), above; or if an insufficient number of qualified Indian enterprises or organizations satisfactorily respond under that procedure; or if a single proposal is not accepted and approved; the IHA or contractor shall advertise for proposals inviting responses from non-Indian as well as Indian-owned economic enterprises and Indian organizations.

The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance an IHA places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation. The award shall be made to the most responsive proposal if the proposal is within the maximum total contract price established for the specific project or activity.

(2) An IHA shall set aside 15 percent of the total number of available rating points for the provision of Indian preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.

(3) An IHA may require that contractors solicit subcontractors by using a RFP based on a point system, and that contractors set aside 15 percent of the available rating points for the provision of Indian preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(e) *Procurement by non-competitive proposals.* In the procurement of equipment, materials, and supplies, and in the award of contracts for services for repairs, maintenance and replacements, the IHA may award a contract by seeking a contractor without satisfying the small purchase, sealed bids or competitive proposals requirements for competition only if award under them is infeasible, and one of the following applies:

(1) The exigencies require immediate delivery of the articles or performance of the service;

(2) only one source of supply is available and the purchasing or contracting officer of the IHA has so certified;

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) HUD has specifically authorized this method.

(f) *Procurement through the Consolidated Supply Program (CSP).* (1) HUD provides technical assistance to IHAs in purchasing certain supplies, materials, and equipment and services necessary in the development, operation, and maintenance of lower

income housing under a Consolidated Supply Program. Under this program, HUD enters into and administers Consolidated Supply Contracts (CSCs) for the voluntary use of the IHAs. IHAs may make purchases for supply items through CSCs between HUD and a contractor without prior HUD approval. A CSC specifies the price and terms under which a purchase can be made from the contractor by HUD or an IHA.

(2) The CSP is subject to the section 7(b) Indian preference requirements. An IHA may use the CSP only after it has determined that it cannot obtain the goods or services from an Indian-owned economic enterprise or Indian organization for an amount that is less than ten percent more than the lowest cost available from a CSP supplier or participant.

(3) If there are two or more CSCs covering items supplied under the same specification and the CSCs provide for a price differential, the IHA shall place a justification in its procurement files if it proposes to make its purchase from any contractor other than the one offering the lowest price.

(4) Purchases under CSCs by IHAs shall be made through IHA issuance of its purchase order directly to the contractor.

(5) If the IHA solicits competitive proposals or sealed bids for procurement of a CSC item, the CSC contractors shall be included in the solicitation.

(Approved by the Office of Management and Budget under OMB control number 2577-0130)

§ 905.180 Training and employment requirements.

(a) IFB Contracts.

(1) For contracts let under an IFB, the IFB shall state that each contractor and subcontractor must include in its bid response

(i) a statement detailing its employment and training opportunities and its plans to provide preference to Indians in implementing the contract; and

(ii) The number or percentage of Indians anticipated to be employed and trained.

The IFB shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(2) Any bid that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate) shall be rejected as nonresponsive.

(3) Failure to comply with the submitted statement shall be a ground

for cancellation of the contract or for the assessment of penalties or other remedies. The IFB and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(4) A finding by HUD that an IHA has entered into a contract that failed to include an acceptable statement on preference in employment and training shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(b) *RFP Contracts.* (1) For contracts let under an RFP, the RFP shall state that each contractor and subcontractor must include in its proposal response—

(i) A statement detailing its employment and training opportunities and its plan to provide preference to Indians in implementing the contract; and

(ii) The number or percentage of Indians anticipated to be employed and trained.

The RFP shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(2) For contracts awarded under an RFP restricted to qualified Indian-owned economic enterprises and Indian organizations, any proposal that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate), shall be rejected. For contracts awarded under an RFP not so restricted, the RFP shall state that, as a mandatory threshold requirement, a proposal must contain the statement or the proposal will be rejected without further evaluation. If the statement is present, a maximum of up to ten percent of the total points available during evaluation of the proposal shall be awarded on the basis of the content of the statement. (These points are in addition to and separate from any points awarded for the provision of Indian preference in contracting or subcontracting in accordance with § 905.175.)

(3) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The RFP and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(4) A finding by HUD that an IHA has entered into a contract that failed to

include an approved statement in implementing preference in employment and training opportunities shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(c) *Provisions on employment or training applicable to all contracts.* The IHA shall require contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions, except where the contractor adequately advertises a position and no Indian either qualifies or accepts the terms of employment. The IHA shall indicate what it considers to be adequate advertisement in the IFB or RFP (as appropriate) and in the contract. A core crew employee is an individual who is (1) A bona fide employee of the contractor or subcontractor at the time the bid or proposal is submitted; or

(2) An individual who was not employed by the contractor or subcontractor at the time the bid or proposal was submitted, but who is regularly employed by the contractor or subcontractor in a supervisory or other key skilled position when work is available.

Each contractor shall submit a list of all core crew employees with its bid or proposal. See also part 135, regarding preference for lower income area residents.

§ 905.185 Government-wide contract requirements.

A HUD regulation found at 24 CFR part 85 embodies government-wide administrative requirements for grants to State, local and Federally recognized Indian tribal governments. The contract provisions listed in § 85.36(i) of that regulation are to be included in any IHA contracts.

Subpart C—Development

§ 905.201 Roles and responsibilities of Federal agencies.

HUD, IHS, BIA, and other appropriate agencies shall coordinate functions in accordance with the Interdepartmental Agreement, which is included as appendix I to this subpart.

§ 905.205 Allocation.

HUD will allocate funds to Indian field offices using a systematic process that considers the relative need for housing in each Region or other geographic area, based on the most recent and reliable data available. See 24 CFR part 791, subpart D.

§ 905.210 Development priorities.

(a) Development of new units will be permitted instead of acquisition of existing housing, whenever the IHA demonstrates that the cost of new construction would be less than the cost of acquiring existing housing or acquiring and rehabilitating existing housing (including the reserve for major repairs in an acquired rental project) or the IHA demonstrates that there is no suitable existing housing to acquire in the area.

(b) Among proposed development projects, HUD will give priority to projects consisting of housing suitable for large families (three or more bedrooms).

§ 905.215 Production methods and requirements.

(a) *Choice and approval of production method.* The IHA shall state on the application for a project its choice of one of the production methods described in this section and, if the method selected is force account, its justification in accordance with paragraph (a)(6) of this section. If HUD disapproves the IHA's preferred development method, it will furnish a statement of its reasons to the IHA.

(1) *Conventional method.* Under the conventional method, the IHA plans the project and prepares drawings and specifications. After the plans and specifications are approved as described in § 905.260, the IHA solicits competitive bids through public advertisement and awards the contract to the lowest responsible bidder. The contractor shall be required to provide completion assurance in the form of 100 percent performance and payment bonds or, in accordance with 24 CFR 85.36(h), a lesser percentage or other security approved by HUD. The contractor receives progress payments during construction, and a final HUD-approved payment upon completion in accordance with the contract.

(2) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a project described in the IHA's invitation for proposals. The invitation for proposals may prescribe the sites to be used. The IHA evaluates the proposals and selects the best proposal—subject to HUD review and concurrence—after considering price, design, site, the developer's experience and other evidence of the developer's ability to complete the project. After HUD concurrence in the proposal selected by the IHA, the IHA may award the contract to the successful developer, who prepares working drawings and specifications unless

previously provided by the IHA. The IHA and the developer enter into a contract of sale after the drawings and specifications are reviewed by HUD as required under § 905.260. Upon completion of the project (or stages thereof) in accordance with the contract of sale, the IHA purchases the project (or stage) from the developer. The IHA may contract for assistance in preparing the invitation and evaluating proposals. The IHA must obtain independent inspection services by an architect, engineer or other qualified person during construction. The IHA may require the developer to furnish completion assurance in the form of 100 percent performance and payment bonds, or other security as approved by HUD in accordance with 24 CFR 85.36(h), unless otherwise required by state law.

(3) *Modified Turnkey.* Under this modified method, the procedure is the same as under the conventional method, except that:

(i) The developer will receive no progress payments from the IHA and will be responsible for acceptable completion before receiving any payment from the IHA; and

(ii) In accordance with 24 CFR 85.36(h), the IHA may require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be approved by HUD. The IHA's decision whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(4) *Self-Help.* The Self-Help method is applicable only to the Mutual Help Homeownership Opportunity program. Under this method, a small group of families builds, with technical assistance and supervision and materials provided by the IHA, a substantial portion of the homes to be purchased by the families in the group. Their work is supplemented by skilled labor obtained under contract. See subpart F for more details concerning this method.

(5) *Acquisition of existing housing (with or without rehabilitation).* Under the Acquisition method, the IHA purchases existing housing that may need only minor repairs or that may require substantial rehabilitation. Repair or rehabilitation may be accomplished before acquisition using Turnkey procedures or after acquisition using Conventional or Force Account procedures. An ACC may be executed before site approval, provided the IHA demonstrates to the satisfaction of the HUD field office that adequate sites are available to cover the units contained in the program reservation.

(6) *Force account method.* (1) Under the Force Account method, an IHA performs construction or rehabilitation using its own work force, either entirely or in combination with subcontractors. See § 905.260 concerning final working drawings.

(2) The Force Account method may be used only if justified by the IHA and approved by the HUD field office. The IHA must demonstrate that it has the technical and administrative capabilities to complete the project within the projected time and budget. The HUD field office shall require that a tribe or IHA agree in writing to cover any costs in excess of the HUD-estimated construction costs; demonstrate that it has the financial resources to meet the excess costs up to a specified amount; and provide some form of security acceptable to HUD to cover excess costs. For this purpose, an IHA may use assets including funds maintained in its reserve for replacements received from the sale of Mutual Help units.

(b) *Public advertisement.* Contracts for development of a project shall be awarded only after public advertisement for competitive bids or proposals. The advertisement shall inform all prospective bidders or proposers of any applicable HUD preference regulations for Indian contractors and of any tribally developed preference requirements that are not inconsistent with HUD regulations.

§ 905.220 Application procedures.

(a) *Submission to HUD.* An IHA may submit an application for a project after HUD issues a general notification that funds are available. The application shall be on the form prescribed by HUD and shall be accompanied by all the legal and administrative attachments required by the form. The application must include comments by the Chief Executive Officer on behalf of the unit of local government where the project is to be located. Where the provisions for the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

(b) *Action on application.* (1) HUD will acknowledge receipt of the application and begin review of the application within 30 days after receipt. The application must be complete, must demonstrate legal sufficiency, and the IHA must have satisfied any requirements imposed in accordance

with § 905.135. If it is evident that any application fails to satisfy these requirements, the HUD field office will immediately return the application and will identify in writing the deficiencies and permit the IHA an opportunity to make corrections within a reasonable period of time. If an application satisfies these prerequisites, HUD will review the application and determine its ranking in comparison to other applications.

(2) HUD will afford the statutorily prescribed priority to applications for units of three or more bedrooms by sorting applications for each program into three groups, based upon the proposed bedroom distribution indicated on the application. Group I will be composed of applications for projects consisting only of units with three or more bedrooms. Group II will be composed of applications for projects that have a mix of units with three or more bedrooms and units of fewer than three bedrooms. Group III will be composed of applications for projects containing only units of fewer than three bedrooms. Applications in Group I will receive priority funding over Group II, and Group II applications will receive priority over Group III applications.

(3) Complete and eligible applications of Group I, Group II, and Group III will be ranked separately for each program. The score calculated for the application of an IHA that has not previously been funded will be adjusted before ranking by multiplying the score by a factor of 2.5 to compensate for a lack of experience on which to base a rating. The rankings will be based on awarding points to each application for the following categories:

(i) The relative unmet need for housing units compared to the other eligible applications for that group, based on IHA waiting lists and the total number of units in management and in the development pipeline. For IHAs that have not previously been funded, the points for this category will be 40. For all other IHAs, this need will be measured for each program type by dividing the number of families on the waiting list for the size of units involved, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40 to calculate an IHA's points for this category. The maximum number of points an IHA can receive is 40 points.

(ii) The relative IHA occupancy rate compared to the occupancy rates of other eligible IHA applications in that group. The occupancy rate for an IHA shall be derived from the most recent

data in the HUD Management Information Retrieval System national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA in the group (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base an occupancy rate, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

(iii) Length of time since the last Program Reservation date. The number of days from January 1, 1990 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of days, since the last Program Reservation for any IHA in the group, and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

(iv) Current IHA development pipeline activity. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. All other IHAs will start with 20 points. For each IHA development that was not completed by January 1, 1990, points will be deducted as follows:

(A) For each IHA development not having an approvable Development Program submitted within one year of Program Reservation date (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(B) For each IHA development not achieving construction start within 30 months (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(C) For each IHA development not meeting HUD requirements for administration of development contracts as set forth in the regulations and handbooks, 4 points are deducted—up to a maximum deduction of 20 points.

(4) The ranking process will produce an ordered list of IHAs that may receive funding. The order is established by the

total number of points the application received in the rating process. For each program type, the application with the highest point total among Group I applications will be funded first, the next highest will be funded second, continuing through the Group I applications and then through Group II applications, and then through Group III applications, until funds are exhausted.

(5) HUD will notify each IHA that submitted an application, in writing, whether its application was selected for funding.

(i) If HUD awards funding to an IHA for the requested number of units or for fewer units, HUD will proceed with a program reservation.

(ii) If HUD awards funding to the IHA for fewer units than the number requested, HUD will provide a written justification for the reduction.

(iii) If the IHA's application is not selected for funding, HUD will include in the notice a description of the method used in making the funding selections and any specific information as to how the IHA was rated on individual criteria in relation to other IHAs.

(6) The HUD field office will maintain specific written documentation outlining the criteria used in making all funding decisions. All relevant documentation will be made available to IHAs upon request.

(c) *Program reservation.* (1) The program reservation will specify program type, housing type, household type, development method, the funds reserved, and the minimum number of total units and units of each bedroom size to be developed. The program reservation will require an IHA to submit a development program within a specified time (see § 905.225) and will limit the total project development cost to the TDC level.

(2) As long as the total project development cost is not exceeded, this minimum number of units may be increased. However, no additional units may be developed until HUD approves an amendment to the program reservation. If an IHA desires to develop more than the minimum number of units approved in the program reservation, it must submit to HUD a request to amend the program reservation, including a justification for the increase.

(d) *Execution of ACC.* (1) Upon issuance of the program reservation, HUD and the IHA may execute an ACC to cover the costs of surveys and other HUD-approved planning activities with respect to the number of units covered by the program reservation. The amount of the ACC will not exceed 3 percent of the total development cost of the

project, except as provided in paragraph (d)(2) of this section.

(2) HUD may execute an ACC for amounts in excess of 3 percent if the IHA demonstrates to the satisfaction of the HUD field office that—

(i) because of unusual circumstances it is essential that development costs in such amounts or for such purposes be incurred before execution of an ACC for construction and operation; and

(ii) the project will successfully proceed to execution of an ACC for construction and operation.

(3) Funds for planning shall in no event be provided or used for purposes, or in amounts, that would not be approvable for inclusion in a development cost budget.

(4) The IHA shall submit for HUD approval together with the request for an ACC for planning a proposed preliminary budget. ACC funds for planning shall not be approved or expended except in accordance with a HUD-approved preliminary budget.

(5) Use of development or operating funds of other projects under ACC to cover costs for a project that is still in the planning stages, and for which a development program has not been adopted or an ACC for construction and operation has not been executed, is strictly prohibited.

(e) *ACC amendment for construction and operation.* An amendment to the ACC to cover development and operation of a project shall not be executed until the sites have received final HUD approval (except for acquisition) and the IHA has adopted, and HUD has approved, the development program for the project. In no event may an IHA execute a contract for construction or development before the execution of an ACC amendment for construction or development.

(Information collection requirements contained in paragraph (a) of this section were approved by the Office of Management and Budget under OMB control number 25770-0030)

§ 905.225 IHA development program.

An IHA development program is required for all development methods, and must be approved by HUD.

(a) *IHA submission.* (1) Within one year of the program reservation date, the IHA shall prepare and submit to HUD a complete development program on a form prescribed by HUD. The IHA's failure to satisfy this requirement may result in a HUD determination of lack of administrative capability and categorization as a "high risk" IHA, in accordance with § 908.135.

(2) If the IHA does not submit a development program within one year,

HUD will contact the IHA to attempt to resolve any problems preventing the submission of a development program. In any event, the IHA must commence construction within 30 months from the program reservation date. An IHA's failure to commence construction 30 months constitutes grounds for termination of the project.

(b) *HUD review.* HUD will review the IHA development program upon receipt. HUD will advise the IHA of any deficiencies and will provide the IHA an opportunity to make corrections within a reasonable period of time. To be approvable, the development program must demonstrate legal sufficiency, the financial feasibility of the project, and its compliance with all program requirements. Upon conclusion of HUD's review, the development program will be either approved or disapproved. If the development program is approved, the ACC will be executed or amended, as necessary, and the IHA will be authorized to acquire the units or prepare final plans for construction. If the development program is disapproved, HUD will notify the IHA of the reasons.

(Information collection requirements contained in paragraph (a) of this section were approved by the Office of Management and Budget under OMB control number 2577-0036)

§ 905.230 Site selection criteria.

(a) *Relation to Tribal, local and regional plans.* Selected sites must comply with all applicable Tribal, local and/or regional plans.

(b) *Access roads.* Access roads up to the boundaries of multi-unit sites shall be provided by the BIA, the tribe or other appropriate agency and shall not be an eligible cost of the project. Access roads up to the boundaries of individual homesites in a scattered site project shall be provided by the homebuyer, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads shall be maintained by a responsible local entity to provide safe and suitable vehicular access at all times. No site may be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity that roads will be constructed before commencement of project construction.

(c) *Utilities.* (1) Before final site approval, the IHA shall obtain a written assurance from the IHS (or the appropriate local agency) that adequate water and sanitation facilities exist or will be provided in time for occupancy of the housing.

(2) Before final site approval, the IHA shall obtain a written assurance from

the appropriate utility companies (or other responsible entities) providing electricity and heating and cooking fuels that the sources exist or will be provided in time for occupancy of the housing.

(3) Before final site approval, the IHA must demonstrate that all utility services necessary for the operation of the project are available and that no legal, political, geographical, or contractual obstacles exist that will prevent access to these utility services.

(d) *Physical characteristics of site.* The physical characteristics of a site shall facilitate overall economy in site preparation, construction, and management. Only reasonable costs will be approved for surveys, planning, test borings, and test wells.

(e) *Topography.* (1) Sites with dominant grades in excess of fifteen degrees shall not be used unless no other approvable sites are available, in which case a written justification shall be provided.

(2) Low-lying sites shall not be approved unless practical and economical means of surface drainage can be provided to accommodate the level of rainfall expected.

(3) The topography shall permit the acceptable placement of the proposed number and type of units.

(f) *Subsurface conditions and natural hazards.* (1) Where there is any evidence to suggest that a site may have unsuitable bearing qualities or excessive areas of rock to be excavated, final site approval will not be given until an examination of the adverse conditions has indicated that they can be overcome without unreasonable additional costs to the project.

(2) Final site approval will not be given if the hazard of earthslides exists either on the site or on adjacent land.

(3) The IHA shall take appropriate precautions in the design of the project in areas where local experience shows past loss of life or damage resulting from earthquakes, hurricanes, tornadoes, or other natural disasters.

(4) The IHA shall undertake subsurface soil investigations, if required, as soon as tentative site approval is given.

(5) Final site approval will not be given if it has been determined that there is an unreasonable risk of natural hazard, unless such risk can be mitigated through design and construction.

(g) *Flooding.* Final site approval will not be given for a site located in a special flood hazard area identified by the Federal Emergency Management Agency or a wetland designated by the

Department of Interior or the U.S. Army Corps of Engineers until it has received special processing by HUD and been found to be in compliance with Executive Orders 11988 (Floodplain Management) and/or 11990 (Protection of Wetlands) in accordance with § 905.120(a). See also the requirement for flood insurance coverage found in § 905.120(b).

(h) *Multi-unit and scattered sites.* A project may consist of a multi-unit site (including individual homes on contiguous lots), or scattered sites, or a combination.

(i) *Size of sites.* (1) The size of a multi-unit site shall be no greater than necessary to permit an acceptable arrangement for the proposed number and type of units.

(2) An individual homesite, whether a scattered site or included in a multi-unit site, shall not exceed one acre—or with respect to trust or restricted land, the size determined by Tribal or local policy—without HUD approval. The amount to be included in the development cost for each site shall not exceed its portion of the total site acquisition cost, based on its actual size.

(j) *Trust or restricted land.* Final site approval of a site on trust or restricted land over which the BIA has authority will not be given unless the IHA obtains written assurance from the BIA that a valid lease executed by all the necessary parties can be obtained within a reasonable time and before start of construction. In any event, construction may not begin on a site until a valid lease is executed.

(k) *Citizen participation.* The IHA shall hold at least two public meetings at which comments are solicited on both the proposed sites and project design from potential occupants, as well as from other persons interested in the project. Such meetings may be held in conjunction with regularly scheduled board meetings or may be held separately. Advertisement of the meetings shall begin at least two weeks before they are held. The IHA should give maximum consideration to all public comments in the design of the project. Minutes from the meetings shall be included in the submission of the development program to HUD. Failure to hold these public meetings or to include the minutes of these meetings in the development program shall be grounds for disapproval of the development program.

§ 905.235 Types of interest in land.

(a) *Trust or restricted land.* Sites on tribally or individually owned trust or restricted land (as defined in 25 CFR 151.2) shall be leased to the IHA for a

term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years) on a lease form approved by HUD, which will provide that the lease cannot be terminated before its expiration without the consent of the IHA. For sites on trust or restricted land, HUD may accept a title status report furnished by the BIA.

(b) *Unrestricted land.* Sites on unrestricted land shall be either conveyed to the IHA in fee or leased to the IHA on a lease form approved by HUD for a term of not less than 50 years.

§ 905.240 Appraisals.

(a) *Requirement for appraisals.* When the cost of a site is to be charged to the IHA's development cost, an appraisal shall be made in accordance with the standards specified in this section. The cost of donated trust land may be assumed to be \$1,500, in which case, no appraisal is required. An appraisal of trust land must be performed if the IHA determines that the value to be attributed to the site exceeds \$1,500.

(b) *Performance of appraisals.* The IHA shall submit a formal request for appraisal to HUD or BIA, as appropriate. When BIA appraisal service is available, appraisals shall be provided by the BIA in accordance with paragraph (c) of this section (unless HUD agrees to provide the service), and shall be accepted by HUD. Otherwise, all appraisals shall be provided by HUD.

(1) *Conformity with appraisal standards.* All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value shall be based on the best available data, properly analyzed and interpreted.

(2) *Nature of legal interest in land.* In valuing the property interest to be conveyed to the IHA, appraisals shall give full consideration to the nature of the property interest, including any legal and market restrictions and restraints on alienation that affect market value. It shall be determined whether the interest to be conveyed to the IHA is fee simple title, an easement, a leasehold or another property right. In the case of tribally or individually owned trust or restricted land to be leased to the IHA, the appraiser shall report the value of the leasehold.

(3) *Market data comparables.* In the application of the market data approach to valuation, property shall be compared with properties that have been leased or sold recently in the same or competing market areas.

(4) *Valuation of trust or restricted land.* When the interest to be appraised

is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable land in the same or competing market areas.

(Approved by the Office of Management and Budget under OMB control number 2577-0031)

§ 905.245 Site approval.

(a) *IHA certification.* Unless HUD has determined that an IHA is "high risk", the IHA may submit a written certification that the actions necessary to satisfy the conditions of tentative and final site approval, as described in this section, have been completed and the site is acceptable. HUD will monitor IHA performance of this function, and, at the time of annual review, may place limitations on this authority to certify compliance or may require additional training of IHA staff as a condition of continued authorization.

(b) *IHA request for approval.* If an IHA has been determined to be "high risk", it shall request approval for each site by submitting the prescribed form to HUD generally before, but no later than simultaneously with, the development program, discussed in § 905.265. The IHA request shall include all exhibits required by the form, including the written approval of the BIA and IHS where needed.

(c) *Tentative site approval.* (1) Tentative site approval will not be given until the requirements for compliance with local governmental approval have been met. See 24 CFR part 791.

(2) If the site has not been proposed previously, each site must be inspected to assure that it meets the site selection criteria in § 905.240 and assess its environmental impact. HUD shall notify the IHA as soon as possible of tentative approval or disapproval of the proposed site. If tentative approval is given, the notification shall state any conditions to be met for final site approval. HUD shall state the reasons for disapproval of any site.

(d) *Final site approval.* (1) Final site approval will be given when a site satisfies all of the conditions stated in the tentative approval and, with respect to trust land, the BIA has given either unconditional concurrence for final site approval or concurrence conditioned only on subsequent execution of site leases or right-of-way easements.

(2) Final site approval on all sites for the project must be given

(i) before HUD executes an ACC for construction and operation, except for a project developed under the acquisition method or for restricted land sites, in accordance with paragraph (d)(3);

(ii) before any commitment is made to acquire or lease any site; and

(iii) before construction is started. In addition, leases and necessary rights-of-way must be obtained before HUD will authorize solicitation of construction bids or before construction may begin on any units.

(3) With respect to trust or restricted land sites, HUD may execute the ACC for construction and operation before final site approval of all sites only when the following five conditions have been met:

(i) All sites for the project have tentative site approval;

(ii) At least 50 percent of the sites have final site approval;

(iii) HUD is satisfied that the balance of the sites will meet the requirements for final site approval no later than one year from execution of the construction contract; and

(iv) The construction contract provides that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor within one year from execution of the construction contract (or HUD-approved extension), the construction contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

(Information collections contained in paragraph (b) of this section were approved by the Office of Management and Budget under OMB control number 2577-0031)

§ 905.250 Design criteria.

(a) *Applicable building code*—(1) *General.* For purposes of housing assisted under this chapter IX, the IHA must use the applicable tribal or other local building code where it meets or exceeds standards of model national building codes; or if there is none, it must use a model building code, or a State or other locality's building code. The IHA must coordinate with the tribe, or local government, if appropriate, to assure adoption of a code that satisfies the standards specified in paragraph (a)(2) of this section. The code may make special provisions for traditional and culturally oriented design features.

(2) *Required standards.* The code used must provide sufficient flexibility to permit the use of different designs and materials; must include cost-effective energy conservation performance standards designed to ensure the lowest total construction and operating costs; must give proper consideration to the

needs of physically handicapped persons for ready access to, and use of, housing assisted under this chapter (see 24 CFR part 8); and must be sufficient to produce a decent, safe and sanitary home.

(b) *Fuel and energy consumption.* In selecting from among design options for heating, cooking, and electrical systems, maximum attention shall be given to cost, adequacy, maintenance of the system, and the longterm reliability of fuel supplies. Where fuel is not locally available at low cost, alternate systems such as wind, solar, or coal, may be used and included in the project cost.

(c) *HUD approval.* The design chosen by the IHA will not be disapproved by HUD without justification. The justification shall consist of a showing by HUD that the design does not meet the applicable building standard, or that the project cannot be constructed within the allowable project cost limit.

§ 905.255 Total development cost standard.

(a) *Total development cost standard.* The total development cost (TDC) standard, which limits the allowable cost for developing Indian housing projects, is determined as a per unit cost for various unit sizes, structure types and geographic areas. It is developed by HUD by applying a simple multiplier to an average construction cost, which does not necessarily include data for actually constructed Indian housing developments.

(1) HUD makes the determination of the TDC standard on a regular basis, by averaging the current construction costs, as listed by at least two nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality. The average construction cost is then multiplied by a simple multiplier, prescribed for elevator structures or for non-elevator structures.

(2) The costs covered by the TDC approved for a project, which is subject to the TDC standard, include all costs associated with the project, except for costs of off-site water and sanitation facilities infrastructure. The TDC limit for a project shall be calculated by multiplying the number of units for each bedroom size and structure type in the project by the applicable per unit TDC standard, and adding together the amounts for all the units in the project.

(b) *Applicability.* Any program reservation, ACC, or ACC amendment for the development, acquisition, or operation of Indian Housing executed on or after November 9, 1989 shall be subject to this TDC limit. The IHA shall prepare a written report for HUD to

demonstrate compliance of each project with this TDC limit.

(c) *Creation of new TDC areas.* HUD field offices shall periodically assess the adequacy of the existing TDC areas. The geographical area used as a TDC area shall be a single contiguous physical area with a clearly identified boundary line. TDC areas shall have a relatively consistent construction bidding environment, and they shall not overlap. The HUD Regional Administrator may request the Indian field office to prepare a recommendation for changing the TDC areas.

(d) *Approval of total development cost for a project.* (1) The total development cost, as defined in § 905.102, is the amount approved by HUD for development of a particular project, and it will not exceed the TDC limit except as follows:

(i) The Secretary may provide that the TDC for a project may exceed the TDC limit by up to 10 percent of the published TDC for special situations such as, but not limited to, required relocation costs, start-up costs for on-site solid waste removal, and energy efficient housing design.

(ii) In unusual circumstances, where the Secretary makes a written determination that there is good cause to exceed the limit of 110 percent of the maximum allowable TDC, the Secretary may approve a higher amount. Examples of circumstances that might form the basis for this type of determination are unforeseen site improvement costs that are on-site only (not including any cost related to roads or driveways), and donations.

(iii) Any approval to exceed the TDC limit for a development that is based on the published TDC standard shall be subject to fund availability.

(2) In approving the total development cost, HUD will approve a reasonable amount for preliminary planning, but the amount may not exceed 3 percent of the TDC, except as provided in § 905.220(d).

(e) *Program reservations.* (1) Funds reserved for initial program reservations shall be based on reasonable costs for developments, up to the maximum allowable TDC, and shall not be reserved automatically at the maximum. The initial program reservation amount shall be the lower of the TDC limit (maximum allowable) based on the published TDC standards, or a development cost estimate based on a hypothetical budget, using the construction cost data and the most appropriate estimates of non-construction line items taken from data of actually constructed HUD-assisted Indian housing. The hypothetical budget

shall reflect the Department's concerns to promote economy while ensuring that Indian housing will be decent, safe, sanitary, durable, cost effective and energy efficient.

(2) After initial funding, the IHA may propose any reasonable housing design in their development program, as long as the code standards adopted by the IHA are not compromised and the cost of the units to HUD will not exceed the funds reserved.

(f) *Cost review.* HUD will review the development budget of each project for compliance with the maximum allowable TDC based on published TDC standards and with reasonable development costs, determined by a cost estimate prepared using HUD data on Indian housing developments actually constructed. The review will consider any conditions that may affect the cost analysis, such as logistical problems associated with developments of remote location, low density or scattered sites, the unavailability of skilled labor and acceptable materials, local customs, abnormal climatic conditions, and alternative heat sources, such as wood or coal.

(g) *Construction at reasonable cost.* The IHA shall complete development of each project at the lowest possible cost of construction and long-term operation of the project, and in no event may the cost of the project exceed the approved total development cost.

(Approved by the Office of Management and Budget under control number 2577-0101)

§ 905.260 Construction and inspections.

Following approval of the development program, the IHA shall commence final planning and begin construction within one year. Unless there are exceptional circumstances beyond the IHA's control, failure to commence construction within 30 months from the time of program reservation is good cause for HUD termination of the ACC and recapture of the reserved funds.

(a) *Conventional projects.* Unless HUD has determined that the IHA is "high risk" (see § 905.135), the IHA may prepare the plans, advertise, and award a construction contract without prior HUD approval and certify compliance with HUD procedures in that process. The IHA must submit copies of the plans, advertisements and construction contract with the certification to HUD. If the IHA has been determined "high risk", the IHA may be required to submit to HUD for approval, all final plans, specifications, bid documents before advertising, bid evaluations and contract award documents.

(b) *Turnkey projects.* Unless HUD has determined that the IHA is "high risk" (see § 905.135), the IHA may execute the contract of sale without prior HUD approval and certify in writing proper preparation of the plans and execution of the contract of sale. The IHA shall submit copies of the plans and Contract of Sale with the certification to HUD. If the IHA has been determined to be "high risk", then the IHA may be required to submit to HUD the request for proposals and all the final plans and specifications prepared by the turnkey developer for approval before executing the contract of sale.

(c) *Force account.* Unless HUD has determined that the IHA is "high risk" (see § 905.145), the IHA may prepare the final working drawings, showing the scope of work to be performed by the IHA staff or by subcontractors, and the solicitation for work and begin work without prior HUD approval. The IHA will then certify proper preparation of the drawings and solicitation of work and will submit copies of the drawings. If the IHA has been determined to be "high risk", HUD may require the IHA to submit the final working drawings and the solicitation for work for approval.

(d) *IHA construction inspections.* Whatever the development method used, the IHA shall be responsible for obtaining independent inspections throughout the construction period. The frequency of inspections and the procedures to be used shall assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an independent architect, engineer, or other qualified person selected by the IHA and approved by HUD. If an IHA is considered "high risk", before it employs any individual for this purpose it must fully demonstrate to HUD the ability and knowledge of the individual to perform all necessary tasks.

(e) *HUD construction monitoring.* HUD representatives or agents shall visit construction sites to evaluate the IHA's contract administration. These visits should not be construed by the IHA as construction inspections.

(f) *Completion inspection.* (1) The contractor shall notify the IHA in writing when the contract work (or stage) is completed and ready for final inspection. If the IHA agrees that the contract work (or stage) is ready for final inspection, the IHA shall arrange for the inspection. The final inspection shall be made jointly by the IHA and the contractor. The IHA must notify the HUD field office before this inspection, and HUD may require that HUD staff be present, based on its review of the IHA's

performance on the development. In a MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA with HUD approval. Maximum consideration shall be given to all homebuyer concerns. When the BIA has maintenance responsibility for any part of the project after completion, it too shall be invited to participate.

(2) If the inspection discloses no deficiencies other than punch list items or seasonal completion items, the IHA may develop an interim Certificate of Completion for submission to HUD. The interim certificate will detail the items remaining and set forth a schedule for their completion, and will allow the IHA to accept the units (or stage) for occupancy. Upon HUD approval of the interim Certificate, the IHA may release the monies due the contractor less withholdings in accordance with the construction contract.

(3) The contractor shall complete the punch list items in accordance with the time schedule. Unless specifically authorized, HUD approval is required before the IHA may pay the contractor for such items. The IHA shall not accept an item if there is a dispute as to whether the item has been completed. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall prepare a final Certificate of Completion. Unless HUD has determined that the IHA is "high risk" (see § 905.135), the IHA will submit the final certificate and certify in writing that the items have been completed, and release the amounts withheld to the contractor.

(g) *Rescinding HUD authorization.* At any time during the development process, HUD will monitor performance of the development functions. HUD may declare an IHA to be "high risk" at any time upon written notification to the IHA and/or may require additional training of IHA staff as a condition of continued authorization to certify adherence to applicable requirements.

(The information collection contained in paragraphs (f)(2) and (f)(3) were approved by the Office of Management and Budget under OMB control numbers 2577-0008 and 2577-0021, respectively)

§ 905.265 Warranty inspections and enforcement.

(a) The construction contract shall specify the warranty periods applicable to items completed as of the date of full availability (DOFA) determined by HUD, and to items completed after that date. It shall also provide for assignment to the IHA of manufacturers' and

suppliers' warranties covering equipment or supplies.

(b) The IHA shall inspect each dwelling unit at least once during the contractor's warranty period, which begins three months after the memorandum of acceptance for occupancy is executed by the IHA and HUD (following an on-site inspection). A final inspection shall be made in time to exercise the IHA's rights before expiration of the contractor's warranties. Each inspection shall cover all items under warranty at the time of the inspection, including items covered by manufacturers' and suppliers' warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties.

§ 905.270 Correcting deficiencies.

(a) *Responsibility.* The IHA must pursue correction of any deficiencies against the responsible party (e.g., architect, contractor or the MH homebuyer) as soon as possible after discovering the deficiencies. Where the costs of correcting deficiencies cannot be recovered from the responsible party and/or the deficiency requires immediate correction to protect life or safety or to avoid further damage to the project unit(s), the IHA may apply to HUD for amendment of the development budget to provide the funds required, or may request that operating receipts be authorized to be used to cover the costs. In any case, program funds shall not be used for this purpose without prior HUD approval. The IHA shall be responsible for correction of any deficiencies which could have been detected and/or corrected during the warranty period if the IHA had inspected at the appropriate time or had pursued correction of deficiencies against the responsible parties.

(b) *Amendments.* (1) The ACC may be amended to provide amounts needed to correct deficiencies (and any damage resulting therefrom) in design, construction, and equipment only where there is substantial evidence that it is not possible to obtain timely correction or payment by the responsible parties, including the source of the performance bond.

(2) In the case of a MH home, the additional cost for correcting deficiencies in design, construction or equipment (and any damage resulting therefrom) shall not result in an increase in the homebuyer's purchase price. If a homebuyer is not in compliance with the MHO Agreement, HUD shall require the IHA to reach agreement with the

homebuyer to correct the noncompliance before approving the work.

§ 905.275 Fiscal closeout.

Upon completion of the development program, the IHA shall submit the actual development cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the requirements of 24 CFR part 44 (Single Audit Act of 1984). If the audited development cost indicates that excess funds have been approved, the IHA shall dispose of the excess as HUD directs. If the audited development cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD directs.

(Approved by the Office of Management and Budget under OMB control number 2577-0033)

Appendix I to Subpart C—Interdepartmental Agreement on Indian Housing

1. *Introduction.* Most assisted housing in Indian areas is made available under the low-income housing programs authorized by the United States Housing Act of 1937 (USH Act). For federally recognized tribes, the Bureau of Indian Affairs (BIA) in the Department of the Interior, and the Indian Health Service (IHS) in the Department of Health, Education and Welfare furnish the principal necessary additional services. The purpose of this Interdepartmental Agreement is to set forth the responsibilities of the signatory agencies, having in mind that the financial and contractual relationships for assisted housing under the USH Act are between HUD and the IHAs and their tribal governments and that this Agreement contemplates promotion of the independent initiative and responsibilities of the IHAs and tribal governments involved. In addition, this Agreement specifies the responsibilities of IHS concerning water supply and sewerage facilities not only for HUD-supported housing but also for the BIA-Housing Improvement Program (HIP).

2. *HUD Responsibilities.* Except as specified in this Agreement, HUD will assume all responsibilities for projects of IHAs of federally recognized tribes under the USH Act that it normally does for any project under the USH Act.

3. Coordination of Agencies.

a. Before issuing the Program Reservation, HUD will request the IHA to specify the time and place for a meeting of the IHA with representatives from HUD, BIA, IHS and any other agencies that may be involved. The time and place will be determined by the IHA and furnished to HUD after consultation with all participants. When HUD issues the Program Reservation, it shall send a notice to all the participants of the time and place for the meeting.

b. The purpose of the meeting will be to decide on the production method and to establish a time schedule of all necessary actions to be taken by the IHA and the federal agencies leading to the start of

construction and all subsequent actions to be taken during the total development period. These actions will include but not be limited to: site review, selection and development as they relate to the provision of water, sewer, house placement, access roads and streets where applicable; homebuyer training program; development program; execution of Annual Contributions contract; execution of Construction Contract; construction schedule; and inspections during construction and upon completion.

c. The time schedule agreed to at this meeting will be signed by each participant on behalf of his agency and by a representative of the IHA, and each participant agency and the IHA will thereby agree to meet that schedule. Any departure from the schedule must be for good cause and justified in writing by the head of the HUD field office, the Chairman of the IHA, the BIA Area Office Director or the IHS Area Director, as the case may be.

d. Complaints concerning compliance with the time schedule or performance of functions by the participating agencies may be made in writing to the head of the HUD field office and, in that event, it shall be his responsibility to resolve the matter. Complaints and the action taken with respect thereto shall be included in the monthly report required under paragraph e.

e. A monthly production progress reporting system on HUD-assisted projects compatible with the needs of HUD, BIA and IHS will be established by HUD in consultation with the other agencies and implemented within 90 days of the effective date of the HUD Indian Housing Regulations.

4. *Related Statutory Requirements.* The Departments of Housing and Urban Development, Health, Education and Welfare, and the Interior shall develop memoranda of agreement, which shall be made a part of this Agreement, relating to compliance with the Flood Disaster Protection Act of 1973, the National Environmental Policy Act, the 1974 Historic and Archeological Data Preservation Act, the National Historic Preservation Act of 1906, the Act for the Preservation of American Antiquities, and related Executive Orders. Until such time as they are approved, each Department shall be responsible for following its own applicable procedures in such manner as to avoid or minimize delays. Required clearances to comply with these Acts will be included in the time schedule worked out at the Interdepartmental coordination meeting (see paragraph 3b).

5. *Homebuyer Training Programs.* An IHA may elect to use, without additional HUD approval, the HUD pre-approved BIA Homebuyer Training Program (HTP). The BIA will assist with this program in accordance with responsibilities enumerated in the Exhibit to this Agreement.

6. Other BIA Functions.

a. *Site Selection and Land Acquisition Services.* The BIA will assist an IHA with site selection and land acquisition services, including title evidence and furnishing the site lease forms for both HUD rental and homeownership projects.

b. *Appraisals.* When requested by an IHA, the BIA will perform appraisals of the proposed sites in accordance with the HUD and BIA regulations.

c. *Roads.* The BIA will carry out its responsibilities under applicable regulations of the Department of the Interior for providing roads, including access roads, which are not the responsibility of HUD under the HUD regulations.

d. *Management Services.* Although there is no commitment by the BIA for the furnishing of assistance in the management and operation of IHA projects, it is understood under this Agreement that where the BIA has staff or facilities available to provide such assistance and an IHA requests such assistance, the BIA will provide it to the extent feasible.

7. *Audits.*

a. The Office of Audit and Investigation (OAI) in the Department of the Interior, will provide audits of IHAs of federally recognized tribes until federal fiscal year 1977. The scope of these audits will be limited as follows:

(1) As a general rule, the audits will omit confirmation procedures for tenants' accounts receivable. The audit opinion will be qualified or a disclaimer will be made in those instances where receivables are material. Other tests and analyses applicable to receivables will be applied, such as review of billing procedures and aging receivables and evaluation of collection efforts. If results of these tests indicate the possibility of serious error or potential for fraud, OAI will attempt confirmation.

(2) Upon request of OAI, HUD will confirm the balance of outstanding notes for the construction of the projects and of HUD contributions surplus accounts.

b. Audits will be scheduled only upon receipt of required financial statements. HUD procedures will provide that the IHA furnish a copy of its financial statement to OAI at the times it is furnished to HUD.

c. Audits will not be performed at those IHAs, such as in Oklahoma and Alaska, which are not located on Federal Indian reservations.

d. HUD will assume responsibility for the audit of IHAs beginning with fiscal year 1977.

8. *Water Supply and Sewage Facilities.*

a. *General.* The IHS has general responsibility to provide water supply and sewage facilities for those Indians and Alaska Natives who are eligible to receive such benefits under the Indian Sanitation Facilities and Construction Act (Pub. L. 86-121). The IHS will exercise this responsibility with respect to facilities required to serve Indian homes constructed or improved with the support of HUD or BIA to the extent that funds are specifically appropriated by the Congress for such facilities and as agreed upon under the terms of this Agreement.

b. *Planning for Budget Purposes.* Sixteen months prior to the beginning of a fiscal year during which IHS will be required to furnish sanitation facilities, HUD and BIA will, to the extent possible, advise IHS with respect to the number and, where possible, the location of HUD-assisted housing starts and of HIP units of housing improvement to be started during that fiscal year. (If the information

cannot be provided at that particular time, HUD and BIA will notify the IHS Director in writing accordingly.) IHS will use this information in developing its budget request to assure that adequate funds are included to support construction of all necessary sanitation facilities for HUD-assisted and HIP housing units.

c. *Evaluation of Housing Site and Determination of Type of Facility to be Provided.*

(1) The ability of the IHA to provide needed water supply and waste facilities is dependent on the availability of a water source of suitable quantity and quality and a means of sewage disposal which will conform to acceptable standards and can be developed within reasonable cost limits. Therefore, the IHS shall be consulted with respect to the general site plan for new housing units and shall review and concur in the site selection.

(2) It shall be the responsibility of the IHS to determine, following its review of the site in each case, whether community or individual type facilities or a combination of these, can best serve the housing units concerned.

(3) IHS's review and approval of sites, along with any recommendations and observations concerning water and sanitation facilities, will be furnished the IHA, which shall in turn forward this material to HUD as part of the Preliminary Site Report submission.

d. *Technical Requirements.* To minimize the cost of providing and maintaining water supply and sewage facilities, the following criteria shall apply:

(1) Wherever possible, project sites will be on or adjacent to existing community water and sewer systems.

(2) Economic feasibility of water and sewer installations shall be considered in site selection. Feasibility shall be determined on the basis of initial construction as well as long range costs of operation, maintenance and replacement. Overly expensive and complex utility installation shall be avoided.

(3) Whenever possible and practicable, dwelling units within a multiunit project site will be located on both sides of the street.

e. *Test Well Drilling.* Whenever it is determined by the IHS that test drilling is required for wells to provide individual water facilities for housing supported by HUD, tentative site approval may be given subject to the results of the test drilling. Should the test drilling indicate an insufficient supply of potable water, the site shall be disapproved and another selected unless another suitable water source can be provided. All test drilling, including obtaining of necessary permits or authorizations, shall be performed by and at the expense of the HUD program and carried out in accordance with accepted practices in the area concerned, and the data obtained shall be furnished to the IHS. For all community water facilities, including facilities for HUD-assisted projects and for individual wells to be provided for BIA sponsored housing, the IHS will perform at its expense any test drilling required.

f. *Soil Percolation Tests.* Soil percolation tests are necessary to ascertain the suitability of a home site for septic tank and drain-field

facilities. The test will be conducted by, or at the expense of, the IHS. The data obtained will be provided to the IHA with IHS's recommendations for accepting or rejecting the site. (IHS's concurrence is required as a condition for use of the site. See paragraph 8c(1) above.)

g. *Individual House Facilities.* In those instances where the IHS determines that individual water supply and/or waste disposal facilities are the most feasible and should be provided, the following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the dwelling and the house service lines.

(2) In the case of BIA-HIP homes, the IHS will provide the on-site water supply and waste disposal facilities along with service lines to a point five feet from the house.

(3) In the case of HUD-supported homes, the housing project will include the cost of installing any water supply and/or sewage disposal facilities which are to be located on the individual house sites. These facilities would include individual water supplies, sewage disposal systems or service lines to the house. All such work is to be carried out in accordance with guides and recommendations furnished by the IHS regarding the location and design of the facilities. These guides and recommendations will be provided by the IHS, following site review, to the IHA.

h. *Community Systems.* All community water and sewer systems will be designed on the basis of a total community concept. The following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the house and the house service lines.

(2) Where HUD-financed new houses are interspersed with existing homes, HUD will fund a pro rata share of the system's cost, excluding water source development, treatment and storage, and sewage treatment facility. This share will be based on the ratio of new to existing homes and will not exceed the cost of equivalent individual type facilities.

(3) Where the systems serve only new HUD-financed houses, HUD will fund the total cost of water distribution and sewage collection systems located within the boundaries of the project. The cost of all necessary facilities outside the housing project boundary will be funded by IHS.

(4) Community systems servicing BIA-HIP homes will be provided by IHS.

i. *Plan Review and Approval.*

(1) In those instances where the housing project includes the cost of installing individual or on-site water and sewer facilities, approval must be obtained from the IHS Area Office on all final plans before advertisement for construction bids. The IHS at its expense will inspect the installation of these facilities during construction and after completion of the work to assure the IHA that the installation has been done in

conformance with the plans and specifications and may be accepted.

(2) If connection to BIA water and/or sewage system is contemplated, a joint feasibility study will be conducted by the BIA and IHS to determine the adequacy of existing facilities to meet the additional requirements, to recommend necessary improvements or additions and to determine points of master or individual metered connections, valving, flushing hydrants, etc., in order to insure compatibility with existing systems. If the system is not adequate, the IHS and BIA will develop a mutually agreed upon program for providing additional capacity.

(3) Responsibility for the acquisition of land or interest therein in connection with the provision of water and sewage facilities for HUD-assisted housing shall not be assumed by the IHS, BIA, or HUD.

Dated: February 7, 1976.

Thomas S. Kleppe,

Secretary, Department of the Interior.

Dated: February 20, 1976.

David Mathews,

Secretary, Department of Health, Education, and Welfare.

Dated: March 2, 1978.

Carla A. Hills,

Secretary, Department of Housing and Urban Development

Exhibit to the Interdepartmental Agreement—BIA Homebuyer Training Program

1. *Scope of Program.* The HUD-approved BIA Homebuyer Training Program (HTP) will provide pre-occupancy and post-occupancy training to Homebuyer families in Mutual Help Projects and shall consist of the following:

a. *Training in the Mutual Help Program.* Training will be provided to explain the Mutual Help Program and the rights and obligations of the Homebuyers.

b. *Training in Home and Appliance Maintenance and Care.* Training will be provided to increase the knowledge and understanding of Homebuyers of the methods and means to properly care for and maintain (1) both the interior and exterior structures of the Home including electrical, plumbing (including water heaters and pumps) and heating systems; (2) major appliances, refrigerators, ranges and dishwashers; (3) minor appliances, such as can openers and toasters; and (4) yards and gardens. In addition, training will be provided to Homebuyers to increase their knowledge about simple repair techniques with regard to the above-mentioned house components and equipment.

c. *Training in Budgeting and Financial Management.* Training will be provided to Homebuyer families on family budgeting, use of credit, and meeting financial obligations, including their responsibility to make the required monthly payments and to allocate funds to various other necessities, such as utilities.

d. *Information and Referral Services.* Homebuyers will be given information on and, where appropriate, will be assisted by referrals to, other local, state, and Federal agencies whose programs relate to total family counseling, and social service,

including services on problems such as alcoholism, drug abuse, etc.

2. *Implementation of Program.*

a. *General.* The HTP will be implemented according to the schedule established under paragraph 3 of the Agreement in accordance with the following:

(1) An IHA will submit a proposal to the BIA which will set forth the specific needs of Homebuyers, the scope of training, methodology and budget to be undertaken within the general guidelines stated above.

(2) The program shall be developed and implemented at the local level by the IHAs employing locally recruited members of the community to the maximum extent possible.

(3) The program may be carried out through individual home visits, demonstration or other group sessions, or by any combination of these deemed appropriate.

(4) The BIA shall assist the IHAs in obtaining the necessary training and instruction for their training staff who will carry out the program. Such training of IHA employees may be undertaken through IHS training centers at universities or other institutions which can provide the needed training.

b. *Progress Reports.* IHAs shall submit quarterly progress reports to BIA and to HUD, which shall include:

(1) A list of expenditures under the program, including salaries, cost of transportation, training materials, office expenses and other justifiable expenditures. All expenditures must be identified and supported by appropriate books and records of the IHA and must be certified as correct by the Executive Director and the Chairman of the IHA.

(2) Names of Homebuyer participants, the number of training sessions, descriptions of training activities, degree of participation, deficiencies noted, and other relevant information or observations.

(3) Efficiency of training as shown by reports, results of tests, reduction in monthly payments delinquencies, reduction in maintenance costs or other factors.

(4) Proposed changes during the next period of training, including program changes to overcome deficiencies described in current or prior report(s) or called to the attention of the IHA previously by BIA and to provide training to any additional or substitute Homebuyers.

c. *BIA Responsibilities.* The BIA will monitor and evaluate the progress and the implementation of the HTP and IHAs and submit semi-annual reports to HUD. Should BIA judge that an IHA is not implementing the program consistent with these guidelines, it will:

(1) Notify the IHA of the deficiencies in its program implementation and provide the necessary assistance to it to assure proper implementation.

(2) Afford the IHA 90 days from the date of notification to take corrective action, and

(3) Report to HUD whether the program should be continued based on the corrective action or whether the program should be terminated.

d. *HUD Responsibilities.* HUD will be responsible for including in the Development Cost of a Project the funds for the HTP,

provided that the BIA will not be reimbursed for utilization of its staff or facilities. HUD will also be responsible for determining whether the program for a particular project shall be terminated on the basis of information provided pursuant to paragraph c above, or otherwise.

Subpart D—Operation

§ 905.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall adopt and promulgate regulations establishing its policies for admission of tenants or homebuyers. The regulations shall specify the types of projects to which they apply (*i.e.*, Rental, MH, or Turnkey III). A copy of the regulations shall be posted prominently in the IHA's office for examination by prospective tenants or homebuyers, and shall be submitted to HUD promptly after adoption by the IHA.

(2) The regulations shall be designed: (i) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's projects; (ii) to attain at initial occupancy, or within a reasonable period of time thereafter (but without prejudice to contract rights of homebuyers), a tenant or homebuyer mix in each project composed of families with a broad range of incomes which generally reflects the range of incomes of those lower income families in the Indian area who would be qualified for admission to the type of project; (iii) to preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment; (iv) in the case of the MH program, to achieve compliance with the provisions of this subpart that specify the requirements concerning income levels of families who otherwise qualify but who are not lower income families; and (v) to give a preference in selection of tenants and homebuyers (in accordance with § 905.305) to families that at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(3) The IHA admission regulations also shall include policies and procedures governing (i) tenant and homebuyer transfer between units, projects, and programs; (ii) requirements for applications and waiting lists for transfer between programs; (iii) other IHA priorities, if any, and a requirement that a tenant or homebuyer is not eligible for voluntary transfer unless all obligations under the current program have been met, including payment of charges to the IHA and maintenance

requirements; (iv) compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and (v) determination of the successor to a unit upon the death of a homebuyer (in the event that the homebuyer has not designated a successor or the successor fails to qualify).

(b) *Income limits.* (1) A family must be a Lower Income Family, as defined in § 905.102, to be eligible for admission. (With respect to Mutual Help program, see special provisions of § 905.416.)

(2) In extremely unusual circumstances, the IHA may request that HUD increase or decrease income limits for lower income families or for very low income families in the Indian area because of unusually high or low family incomes. Such a request can be granted only by joint approval of HUD's Assistant Secretary for Housing and Assistant Secretary for Public and Indian Housing, with the concurrence of the Secretary of Agriculture.

(c) *Standards for IHA tenant/homebuyer selection criteria.*

(1) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant, and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The IHA's tenant/homebuyer selection criteria must be in accordance with HUD guidelines and approved by the HUD Field Office.

(2) In the event of any unfavorable information regarding an applicant, the IHA must take into consideration the time, nature, and extent of the past occurrence and reasonable probability of future favorable performance.

(d) *Single person occupancy limitations under section 3(b)(3) of the Act.* No IHA shall admit single persons, as defined in § 905.102, to any Indian housing unit except with authorization from the HUD field office director in accordance with this section.

(1) The HUD field office director may authorize any IHA to permit single persons to occupy any project if (i) the project is one that has been or is intended to be converted to a lower income project assisted under the Act, and (A) single persons are residing in the project at the time of conversion, or (B) the director determines that the project is not suitable for occupancy by the elderly, disabled, or handicapped because of design or location; or (ii) the project is a lower income project receiving assistance under the Act and

is experiencing sustained vacancies as evidenced by one or more units having been vacant for a period of sixty days or more and no eligible applicants other than single persons are available.

(2) Any IHA may initiate an application for authorization to permit single persons to occupy a project. In addition, the HUD field office director may request the IHA to submit such an application. The application shall be submitted to the appropriate HUD field office in the form of a letter, which shall include the following:

(i) Identification of the project or projects involved and the maximum number of units for which the authorization is requested.

(ii) A copy of the tenant selection policy that shall govern occupancy by single persons.

(iii) A narrative justification for the request including, in cases where the request is based on vacancies in a project already receiving assistance, a description of the IHA's efforts to attract eligible applicants other than single persons to the project or projects involved.

(3) The HUD field office shall notify the IHA in writing of the action taken with respect to the application, which may be one of the following:

(i) Approval as requested.

(ii) Approval for a lesser number of units or projects than requested and any other conditions or modifications.

(iii) Disapproval, with a statement of the reasons.

(4) Notwithstanding any authorization to permit occupancy by single persons, an IHA shall extend preference to elderly families (including disabled persons and handicapped persons) and displaced persons over single persons unless the field office director has determined that the project or portion of the project is not suitable for occupancy by the elderly, disabled, or handicapped.

(e) *Selection preference with respect to projects for elderly families.* (1) In determining priority for admission to projects for elderly families, an IHA must give a preference to elderly families. When selecting applicants for admission from among Elderly Families, an IHA must follow its policies and procedures for applying the Federal preferences contained in § 905.305.

(2) An IHA may give a preference to Near Elderly Families in determining priority for admission to projects for elderly families when the IHA determines that there are not enough eligible elderly families to fill all the units that are currently vacant or expected to become vacant in the next 12 months. In no event may an IHA admit a Near Elderly Family if there are

eligible Elderly Families on the IHA's waiting list that would be willing to accept an offer for a suitable vacant unit in that project.

(3) Before electing the discretionary preference in paragraph (e)(2) of this section, an IHA must conduct outreach to attract eligible Elderly Families, including, where appropriate, Elderly Families residing in projects not designated as being for elderly families.

(4) If an IHA elects the discretionary preference in paragraph (e)(2) of this section, the IHA must follow its policies and procedures for applying the Federal preferences contained in § 905.305 when selecting applicants for admission from among Near Elderly Families. Near Elderly Families that do not qualify for a Federal preference and that are given preference for admission under this section over other non-elderly families that qualify for such a Federal preference are not subject to the 10 percent limitation on admission of families without a Federal preference over families with such a Federal preference that may initially receive assistance in any 1-year period, as set out in § 905.505(b)(2)(ii). If a Near Elderly applicant is a Single Person, the Near Elderly Single Person may be given a preference for admission over other Single Persons to projects for the elderly. Notwithstanding any preference over other Single Persons, a Near Elderly Single Person's selection for admission is subject to the single person occupancy limitation restriction contained in paragraph (d) of this section.

(f) *Verification of information and notification to applicants.*

(1) *Verification.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

(2) *Notification to applicants.* (i) If an applicant is determined to be ineligible for admission to a project, the IHA shall promptly notify the applicant of the basis for such determination and shall provide the applicant, upon request and within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination; and

(ii) When a determination has been made that an applicant is eligible and satisfies all requirements for admission including the tenant selection criteria, the applicant shall be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

(Approved by the Office of Management and Budget under OMB control number 2577-0063)

§ 905.305 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each IHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2) (i) The IHA must inform all applicants of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the IHA when this section is implemented or thereafter.

(ii) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the IHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) An IHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the IHA submits alternative definitions for HUD's review and approval. An IHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or it may, in its own discretion and without HUD approval, adopt verification procedures of its own, as provided in § 960.206.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided

under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.*

(1) Each IHA must include the Federal preferences in its tenant selection policies and procedures. The IHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, and other applicable requirements.

(2) (i) Except as provided in paragraph (b)(2)(ii) of this section, the IHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be admitted before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for admission.

(ii) The IHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted before other applicants who are so qualified. Not more than 10 percent of the applicants who initially are admitted in any one-year period (or such shorter period selected by the IHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the IHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for admission before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable

bathbath or shower inside the unit for the exclusive use of the family).

(3) To the extent that title VI of the Civil Rights Act of 1964 and the Fair Housing Act (42 U.S.C. 3601-3620) apply to a tribal government, any selection preferences or priorities used by an IHA within such a tribe's jurisdiction must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; the Fair Housing Act (42 U.S.C. 3601-3620); Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101-07; or HUD's regulations and requirements issued under these authorities.

(4) The IHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the IHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in the project) by certifying to the IHA that they qualify for a preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and admission to a project, including a change from one Federal preference category to another.

(3) Once an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has been verified, an IHA need not require the

applicant to verify such qualification again, unless, as determined by the IHA, such a long time has elapsed since verification as to make reverification desirable, or the IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(4) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) (A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(5) An applicant may not qualify for a Federal preference under paragraph (c)(1)(ii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) (A) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(B) The applicant lives in a housing unit with such an individual who engages in such violence.

(ii) For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the IHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal (i) to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or (ii) to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the certification, in a form prescribed by the Secretary:

(1) Made by a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Made by a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Made by an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain

because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Made by the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence, that an applicant has been or is being displaced because of domestic violence, as described in paragraph (d)(2) of this section.

(f) *Definition of substandard housing.*

(1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for

human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, single room occupancy (SRO) housing, as defined in 24 CFR 882.102, is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is "monthly income", which is one-twelfth of "annual income" as defined in § 905.320.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The IHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the

purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The IHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The IHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and total tenant payment under 24 CFR 905.315(c) or 905.320.

(2)(i) An IHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) An IHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the IHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the IHA determines that an applicant does not meet the criteria for receiving a Federal preference, the IHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the IHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the IHA. Those designated may be an officer or employee of the IHA, including the person who made or reviewed the determination, or his or her subordinate.

The procedures specified in this paragraph must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.*

Notwithstanding the fact that the IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for admission and claims that he or she qualifies for a Federal preference under this section, unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an inadequate pool of applicants who are likely to qualify for a Federal preference, and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

§ 905.310 Restriction against ineligible aliens. [Reserved]

§ 905.315 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III projects.*

The amount of rent required of a tenant in a rental project or the homebuyer payment amount for a homebuyer in a Turnkey III project for Turnkey III contracts executed after August 1, 1982, shall be equal to the tenant rent as determined in accordance with § 905.325. For Turnkey III contracts executed on or before August 1, 1982, the homebuyer payment is determined in accordance with the contract. If the utility allowance exceeds the rent or required monthly payment, the IHA will pay the utility reimbursement as provided in § 905.325(b). In the case of a Turnkey III homebuyer, payment of a utility reimbursement may affect the IHA's evaluation of the homebuyer's homeownership potential. (See § 905.503(c)(3) and § 905.529 regarding loss of homeownership potential and § 905.523 regarding funds to cover such reimbursements.)

(b) *MH projects.* The amount of the required monthly payment for a homebuyer in an MH project placed under ACC on or after March 9, 1976,

and a homebuyer admitted to occupancy in an existing project on or after the effective date of the conversion of the project in accordance with § 905.455 shall be determined in accordance with § 905.330. The amount of the required monthly payment for a homebuyer in an MH project placed under ACC before March 9, 1976 is determined in accordance with the MH Agreement. Utility reimbursements are not applicable to the Mutual Help program.

(c) *Initial determination, verification, and reexamination of family income and composition*—(1) *Income, family composition, and eligibility.* The IHA shall be responsible for determination of annual income and adjusted income, for determination of eligibility for admission and total tenant payment or homebuyer required monthly payment, and for reexamination of family income and composition at least annually for all tenants and homebuyers. The "effective date" of an examination or reexamination shall be: in the case of an examination for admission, the date of initial occupancy; and in the case of a reexamination of an existing tenant or homebuyer, the date on which any change in tenant payment or required monthly payment resulting from the reexamination takes place. If there is no change, the effective date is the date a change would have taken place if the reexamination had resulted in a change in payment.

(2) *Verification.* As a condition of admission to, or continued occupancy of, any unit, the IHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form authorizing any depository or private source of income, or any Federal, State, or local agency, to furnish or release to the IHA and to HUD such information as the IHA or HUD determines to be necessary. The IHA also shall require the family to submit directly the documentation determined to be necessary, including any information required under § 905.510 or 24 CFR part 750. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance, for determining the family's adjusted income or tenant rent or required monthly payment, for verifying related information, or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with

administration of this part or an application for assistance.

(3) *Rent and payment adjustments.* After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or homebuyer payment amount. The tenant or homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income. If the IHA receives information from the family or another source concerning a change in the family's income or other circumstances, between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, must promptly make any adjustments determined to be appropriate in the rent or homebuyer payment amount. (See § 905.330(b).)

§ 905.320 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring or sporadic as defined in paragraph (c)(9) of this section, and exclusive of certain other types of income specified in paragraph (c) of this section.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in

paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) the maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities.

If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, made available for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran made available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice is published from time to time in the Federal Register and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

§ 905.325 Total Tenant Payment—Rental and Turnkey III programs.

(a) *Total Tenant Payment.* Total tenant payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of monthly adjusted income;

(2) 10 percent of monthly income; or

(3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Utility reimbursement.* If the utility allowance exceeds the total tenant payment, the difference (the utility reimbursement) shall be due to the family. If the utility company consents, an IHA may, at its discretion, pay the utility reimbursement directly to the utility company.

(Approved by the Office of Management and Budget under control number 2577-0105)

§ 905.330 Mutual help required monthly payment.

(a) *Establishment of schedule.*

(1) Each homebuyer shall be required to make a monthly payment ("required monthly payment"), in accordance with a schedule determined by the IHA and approved by HUD. The schedule will provide that the minimum required monthly payment equal the administration charge.

(2) Subject to the requirement for payment of at least the administration charge, each homebuyer shall pay an amount of required monthly payment computed by:

(i) Multiplying adjusted income by a specified percentage; and

(ii) Subtracting from that amount the utility allowance determined for the unit.

The specific percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA and approved by HUD.

(3) The IHA's schedule may provide that the required monthly payment shall not be more than a maximum amount. The maximum shall not be less than the sum of:

(i) The administration charge; and
(ii) The monthly debt service amount shown on the homebuyer's purchase price schedule.

(4) If the "required monthly payment" exceeds the administration charge, the amount of the excess shall be credited to the homebuyer's monthly equity payments account (see § 905.437(b)).

(b) *Administration charge.* The administration charge must cover operating expense for the following categories, and any other operating expense categories included in the IHA's HUD-approved operating budget for a fiscal year or other budget period, and may reflect differences in expenses attributable to different sizes or types of units:

(1) Administrative salaries, payroll taxes, etc.; travel, postage, telephone and telegraph, office supplies; office space, maintenance and utilities for office space; general liability insurance or risk protection costs; accounting services; legal expenses; and operating reserve requirements (§ 905.431); and

(2) General expenses, such as premiums for fire and related insurance, payments in lieu of taxes, if any, and other similar expenses.

(c) *Utilities.* The homebuyer shall furnish utilities for the home. However, if the IHA determines that the homebuyer is unable to pay for the utilities and that this inability creates conditions hazardous to life, health or safety of the occupants or threatens immediate, serious damage to the property, the IHA may pay for the utilities and charge the homebuyer's account for doing so, in accordance with § 905.437(c). When the homebuyer's account has been exhausted, the IHA may pursue termination of the homebuyer agreement and offer the homebuyer a transfer into the rental program.

(d) *Adjustments in the amount of the required monthly payment.* (1) After the initial determination of a homebuyer's required monthly payment, the IHA shall increase or decrease the amount of such payment in accordance with HUD regulations to reflect changes in adjusted income (pursuant to a reexamination by the IHA), adjustments in the administration charge, or in any of the other factors affecting computation of the homebuyer's required monthly payment.

(2) In order to accommodate wide fluctuations in required monthly payments due to seasonal conditions, an IHA may agree with any homebuyer for payments to be made in accordance with a seasonally adjusted schedule which assures full payment of the required amount for each year.

(e) *Old Mutual Help.* See § 905.315(b).

§ 905.335 Rent and homebuyer payment collection policy.

Each IHA shall adopt and promulgate, and use its best efforts to obtain compliance with, rules or regulations sufficient to assure the prompt payment and collection of rents and required homebuyer payments. A copy of the rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request. Such rules or regulations must be in accordance with HUD guidelines and will be reviewed by HUD. If an IHA has been determined to be "high risk" (see § 905.135), the IHA rules or regulations may be required to be approved by the HUD field office.

§ 905.340 Grievance procedures and leases.

(a) *Grievance procedures.* (1) Each IHA shall adopt and promulgate grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and shall assure that tenants and homebuyers will:

- (i) Be advised of the specific grounds of any proposed adverse action by the IHA;
- (ii) Have an opportunity for a hearing before an impartial party upon timely request;
- (iii) Have an opportunity to examine any documents or records or regulations related to the proposed action;
- (iv) Be entitled to be represented by another person of their choice at any hearing;
- (v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and
- (vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) An IHA may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, if the secretary has determined that the jurisdiction's procedures provide the basic elements of due process.

(3) A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

- (1) Do not contain unreasonable terms and conditions;
- (2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;

(3) Require the IHA to give adequate written notice of termination of the lease which shall not be less than—

(i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;

(ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case;

(4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause; and

(5) Provide that a tenant, any member of the tenant's household, or a guest or other person under the tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near the premises, while the tenant resides in the IHA-owned property, and such criminal activity shall be cause for termination of tenancy. For purposes of this paragraph, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(Information collection requirement contained in paragraph (a) has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2577-0006)

§ 905.345 Maintenance and improvements.

(a) *General.* Each IHA shall adopt and promulgate, and use its best efforts to obtain compliance with, rules or regulations to assure full performance of the respective maintenance responsibilities of the IHA and tenants or homebuyers. A copy of such rules or regulations shall be posted prominently in the IHA office, and shall be provided to an applicant, tenant, or homebuyer upon entry into the program and upon request.

(b) *Provisions for rental projects.* For rental projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) The responsibilities of tenants for normal care and maintenance of their dwelling units, and of the common property, if any;

(2) Procedures for handling maintenance service requests from tenants;

(3) Procedures for IHA inspections of dwelling units and common property;

(4) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(5) Procedures for charging tenants for damages for which they are responsible.

(c) *Provisions for MH and Turnkey III projects.* For MH and Turnkey III Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) The responsibilities of homebuyers for maintenance and care of their dwelling units and common property;

(2) For Turnkey III Projects only, procedures for handling service requests from homebuyers for nonroutine maintenance;

(3) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities;

(4) Procedures for IHA inspections of homes and common property;

(5) Procedures for IHA performance of homebuyer maintenance responsibilities (where homebuyers fail to satisfy such responsibilities) including procedures for charging the homebuyer's proper account for the cost thereof;

(6) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(7) Procedures for charging homebuyers for damage for which they are responsible.

(d) *IHA responsibility in MH and Turnkey III projects.* The IHA shall enforce those provisions of a Homebuyer's Agreement under which the homebuyer is responsible for maintenance of the home. The IHA has overall responsibility to HUD for assuring that the housing is being kept in decent, safe, and sanitary condition, and that the home and grounds are maintained in a manner that will preserve their condition, normal wear and tear excepted. Failure of a homebuyer to meet the obligations for maintenance shall not relieve the IHA of responsibility in this respect. Accordingly, except as discussed below, the IHA shall conduct a complete interior and exterior examination of each home at least once a year, and shall furnish a copy of the inspection report to the homebuyer. The IHA shall take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the homebuyer's obligations under the homebuyer's agreement. The IHA may inspect the home once every three years, in lieu of an annual inspection only where the homebuyer is in full compliance with the original terms of the homebuyer's agreement, and the home is maintained in decent, safe, and sanitary condition, as reflected by the last inspection by the IHA. However, if at any time the IHA

determines that the homebuyer is not in compliance with the homebuyer's agreement, it must reinstitute annual inspections.

(Information collection requirement contained in paragraph (d) has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2577-0114)

§ 905.350 Correction of management deficiencies.

(a) The IHA shall promptly take such action as may be required by HUD to remedy management deficiencies. HUD shall provide the maximum feasible assistance to an IHA to remedy management deficiencies. Particular attention shall be given to the correction of serious deficiencies in any of the following:

- (1) Physical maintenance of the property;
- (2) Occupancy practices;
- (3) Maintenance of accounts and records;
- (4) Cost controls;
- (5) Handling of funds;
- (6) Rent or homebuyer payment collection;
- (7) Required reports to HUD;
- (8) IHA staffing and staff turnover; and
- (9) Tribal government cooperation.

(b) If an IHA fails to correct serious deficiencies, it may be determined to be "high risk" in accordance with §§ 905.135 and 85.12.

§ 905.355 Tenant participation and management.

(a) *Purpose and applicability.* The purpose of this section is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing. Although it is not as easy to develop organized resident management where housing involves single-family homes on scattered sites (the predominant type for Indian housing) as it is where housing involves multifamily dwellings, the Department encourages resident participation in developments of all housing types. The policies stated in this section apply to an IHA that has an ACC with the Department for housing other than housing administered under the Section 8 Housing Assistance Payments program.

(b) *Policy.* It is HUD's policy to encourage participation in the management of Indian housing by its residents, as may be found appropriate by an IHA after consultation with the residents. Residents and the IHA should identify appropriate roles and

responsibilities for creating and sustaining constructive resident participation.

(c) Resident participation guidelines.

(1) Residents should have the primary responsibility for determining their goals, organizational structure and method of operating. An IHA should consider any reasonable request by residents or resident organizations to participate in management.

(2) A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities. An IHA should grant formal recognition to the resident organization if it meets the requirements for such an organization.

(3) At a minimum, the IHA and the resident organization should put in writing their understanding concerning the elements of their relationship.

(d) *Resident Organization (RO).* A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

- (1) It is representative of the residents it purports to represent.
- (2) If it represents residents in more than one project or in all of the projects of an IHA, it must fairly represent residents from each project that it represents.

(3) It has adopted written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It has a democratically elected governing board. The voting membership of the board shall consist of the residents of the project or projects that the resident organization represents.

(e) *Resident Management Corporation (RMC).* A Resident Management Corporation is an entity that proposes to enter into, or enters into, a management contract with an IHA under this part. The corporation must have each of the following characteristics:

(1) It is a nonprofit organization that is incorporated under the laws of the State or Indian tribe within which it is located.

(2) If it is established by more than one resident organization, each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It has an elected Board of Directors.

(4) Its bylaws require the Board of Directors to include representatives of each resident organization or resident

organization involved in establishing the corporation. (It may serve as both the resident management corporation and the resident organization, so long as the corporation meets the requirements of this section for a resident organization.)

(5) Its voting members are required to be residents of the project or projects it manages.

(6) Its establishment is approved by the resident organization, or, if there is no organization, creation of an organization is approved by a majority of the households of the project for the purpose of determining the feasibility of establishing a RMC to manage the project.

(f) *Funding for resident management.* An IHA, at its discretion and subject to the availability of funds, may provide reasonable in-kind and cash assistance for resident participation and resident management activities. In addition to, or in lieu of, IHA operating funds, Comprehensive Improvement Assistance Program (CIAP) funds may be requested by an IHA to assist in developing or improving resident management capabilities as part of management improvements under comprehensive modernization. (See subpart I.)

(Approved by the Office of Management and Budget under control number 2577-0087)

§ 905.360 IHA employment practices.

Each IHA shall adopt and promulgate regulations with respect to the IHA's own employment practices, which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act, and E.O. 11246, where applicable. A copy of these regulations shall be posted in the IHA office, and a copy shall be submitted to HUD promptly after adoption by the IHA. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of title VII. See also § 905.165(b)(2)(ii). (Approved by the Office of Management and Budget under OMB control number 2577-0136)

Subpart E—Mutual Help Homeownership Opportunity Program

§ 905.401 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements that are applicable to the MH Homeownership Opportunity Program. For any matter not covered in this subpart, see the provisions of the

other subparts contained in this part. Projects developed under the Self-Help development method must comply with the requirements of this subpart and of subpart F.

(b) *Applicability.* The provisions of this subpart are applicable to all MH projects placed under ACC on or after March 9, 1976, and to any projects converted in accordance with § 905.455 or § 905.503.

§ 905.404 Program framework.

(a) An MH project using a method of development not involving Self-Help, involves three basic contracts: an ACC, an MHO Agreement and a Construction Contract, each in a form prescribed by HUD. (See § 905.220(d)(1).)

(b) Projects under the Mutual Help form of ACC may not be consolidated with projects under other forms of ACC.

§ 905.407 Application.

(a) *General.* (1) *Availability of eligible homebuyers.* An application for an MH project shall include a certification that there is a sufficient number of eligible homebuyers to ensure the viability of the project.

(b) *Sites.* The application must identify the sites and, for Self-Help projects, pre-approved plans and specifications, with only minor modifications.

(1) *Purchase.* An IHA may purchase a homesite if neither the tribe nor the homebuyers can donate or contribute enough sites suitable for project use.

(2) *Availability of sites for use by another homebuyer.* Each homesite shall be legally and practicably available for use by another homebuyer. If a site is part of other land owned by the prospective homebuyer, the lease or other conveyance to the IHA shall include the legal right of access to the site by any substitute homebuyer.

(3) *Alternative sites and substitution of sites.* In order to minimize delay to the project in the event of the withdrawal of a selected homebuyer or an approved site, the IHA should have a reasonable number of alternates available; and no substitution of a site shall be permitted after final site approval unless the change is necessary by reason of special circumstances and, for an IHA determined to be "high risk", has been approved by HUD.

(c) *Authorizing resolution.* The application must include a certified copy of the resolution adopted by the IHA's Board of Commissioners authorizing the appropriate officers to submit the application to HUD and must indicate approval of participation in the Self-Help program, if applicable.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under OMB control number 2577-0030)

§ 905.410 HUD review of application.

(a) *Completeness.* HUD will review each application in accordance with § 905.220 (and § 905.469, if Self-Help development method). If an application does not satisfy all these requirements, it will be returned to the IHA with suggestions for correcting the deficiencies.

(b) *Program reservation.* When an application is complete, there is sufficient funding available, and the requirements of § 905.220 (and § 905.407, if Self-Help) have been satisfied, HUD will issue a program reservation and execute an ACC, and the IHA will proceed to submit a development program.

§ 905.413 Special provisions for development of an MH project.

(a) *MH construction contracts.* (1) *Special provisions to be included in advertisements.* The advertisement for a construction contract other than one used in Self-Help shall state that:

- (i) The project is an MH project,
- (ii) The contractor may obtain a copy of the proposed MH construction contract, and
- (iii) The contractor may obtain a list of the sites.

(2) *Responsibility of contractor.* The construction contract shall provide that the contractor is responsible for acceptable completion of all the homes.

(b) *Consultation with homebuyers.* The IHA shall provide for soliciting comments from homebuyers and other interested parties, as provided in § 905.230(k), concerning the planning and design of the homes. Any changes resulting from such consultation shall be consistent with HUD standards and cost limitations and shall be subject to IHA and HUD approval.

(c) *Financial feasibility.* The application shall be supported by signed applications maintained in the IHA's office of a sufficient number of selected homebuyers who are able and willing to pay the projected administration charge, meet the other obligations under MHO Agreements (see § 905.416(b)), and enter into MHO Agreements. HUD may request submission of the applications, as necessary, to determine feasibility of the development.

(d) *Rights under MHO agreement if project fails to proceed.* Any MHO Agreement shall be subject to revocation by the IHA if the IHA or HUD decides not to proceed with the development of the project in whole or in part. In such event, any contribution

made by the homebuyer or tribe shall be returned. If the contribution was a land contribution, it will be returned to the contributor on the same terms, unless construction has taken place—in which case, the homebuyer may be required to reimburse the IHA for the value of the improvement.

(e) *Mutual Help contribution.* See § 905.419.

(f) *Insurance.* Upon occupancy, the homebuyer is responsible for payment of insurance coverage as part of its administration charge (see § 905.330(b)).

§ 905.416 Selection of MH homebuyers.

(a) *Admission policies.* (1) *Lower income families.* An IHA's admission regulations for the MH program, adopted in accordance with § 905.301, must limit admission to lower income families, except as otherwise permitted in this paragraph.

(i) An IHA may provide for admission of applicants whose family income exceeds the levels established for lower income families to the MH program operated on an Indian reservation or in an Indian area, if the IHA demonstrates to HUD's satisfaction that there is a need for housing for such families that cannot reasonably be met except under this program.

(ii) An IHA may provide for admission of a non-Indian applicant to the MH program operated on an Indian reservation or in an Indian area, if the IHA determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met except under this program. If the IHA permits admission of non-Indians to its MH program, the IHA must specify the criteria it uses to determine whether a family's presence is essential in its admission regulations.

(2) *Limitation on number of units for non-lower income families.* The number of dwelling units in any project assisted under the MH program that may be occupied by or reserved for families on Indian reservations and other Indian areas whose incomes exceed the levels established for lower income families (i.e., applicants admitted under paragraph (a)(1)(i) of this section) may not exceed whichever of the following is higher:

- (i) Ten percent of the dwelling units in the project; or
- (ii) Five dwelling units.

(3) *Different standards for MH program.* The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH

program should provide standards for determining a homebuyer's:

(i) Ability to provide maintenance for the unit; and

(ii) Potential for maintaining at least the current income level.

(b) *Ability to meet homebuyer obligations.* A family shall not be selected for MH housing unless, in addition to meeting the income limits and other requirements for admission (see § 905.301), the family is able and willing to meet all obligations of an MHO Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution and its own utilities, and to pay the administration charge. A family may be selected even if the administration charge alone would exceed 30 percent of the family's monthly adjusted income, if the family can reasonably assure the IHA that it will pay the administration charge and meet its other obligations under the MHO Agreement (e.g., as demonstrated by the family's income, including per capita or other payments that are not included in payment calculations, the family's past history, or the family's ability to supplement its income by providing its own food, fuel, or other necessities). For Self-Help projects, see also the requirements of § 905.463(b).

(c) *MH waiting list.* (1) Families who wish to be considered for selection for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, must also submit an application for selection in order to be considered for an MH project; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and that have been determined to meet the admission requirements. The IHA shall maintain an MH waiting list in accordance with requirements prescribed by HUD.

(d) *Making the selections.* Within 30 days after HUD approval of the application for a project, the IHA must proceed with selection of as many homebuyers as there are homes in the project. Selection of homebuyers must be made from the MH waiting list in accordance with the date of application, qualification for a Federal preference in accordance with § 905.305, other pertinent factors under the IHA's admissions regulations established in accordance with § 905.301, and all admissions are subject to 24 CFR part 750. Selection of a homebuyer will be made only after the site for that homebuyer has received final site approval by IHA certification to HUD, or, for a "high risk" IHA, by the HUD

Office of Indian Programs, and the form of MH contribution to be made by that homebuyer (or donated for that homebuyer) has been determined.

(e) *Principal residence.* A condition for selection as a homebuyer is that the family agrees to use the home as their principal residence during the term of the MHO Agreement; however, an MH home may be sublet for temporary absences, such as for reasons stated in the IHA's admission and occupancy policy. The acquisition of ownership of another home or failure to continue to use the MH home as the principal residence shall constitute grounds for termination of the MHO agreement.

(f) *Notification of applicants.* The IHA shall give families prompt written notice of whether or not they have been selected. If a family is not selected, the notice must state the basis for the determination and that the family is entitled to an informal hearing by the IHA on the determination, if a request for a hearing is made within a reasonable time (as specified in the notice). Such a hearing should be held within a reasonable time. (Informal review provisions applicable to denial of an application for a Federal preference under § 905.305 are contained in paragraph (k) of that section.)

(g) *Change in income.* (1) A change in a family's income may affect its right to occupancy after the MHO agreement is executed. If it becomes evident that a family's income is inadequate to meet its obligations, the IHA may counsel the family about other housing options, such as its rental program. Inability of the family to meet its obligations under the homebuyer agreement is grounds for termination of the agreement.

(2) If a family's income changes before execution of the MHO agreement in such a way as to make it ineligible (either too high or too low), the IHA may reject the family for this program. However, even a family with an income above the lower income limits may be admitted to this program, provided that the number of such families admitted does not exceed the limit stated in paragraph (a)(2) of this section.

(Information collection requirements of this section have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2577-0003)

§ 905.419 MH contribution.

(a) *Amount and form of contribution.* As a condition of occupancy, the MH homebuyer will be required to provide an MH contribution. Contributions other

than labor may be made by an Indian tribe on behalf of a family.

(1) The value of the contribution must be \$1,500.

(2) The MH contribution may consist of land, labor, cash, materials, equipment, or any combination thereof. Land contributed to satisfy this requirement must be owned in fee simple by the homebuyer or must be assigned or allotted to the homebuyer for his or her use before application for an MH unit. Contributions of land donated by another person on behalf of the homebuyer will satisfy the requirement for an MH contribution. A homebuyer may provide cash to satisfy the MH contribution requirement where the cash is used for the purchase of land, labor, or materials or equipment for the homebuyer's home.

(3) The amount of credit for an MH contribution in the case of land, labor, or materials or equipment shall be based upon the market value at the time of the contribution, but in no case will the credit exceed \$1,500. In the case of labor, materials or equipment, market value shall be determined by the contractor and the IHA. In the case of land, market value shall be determined by the IHA, but in no case will the credit exceed \$1,500 per homesite. The use of labor, materials or equipment as MH contributions must be reflected by a reduction in the Total Contract Price stated in the Construction Contract and the amount must be approved by HUD.

(b) *Execution of agreements.* For projects other than Self-Help development projects, MHO Agreements must be signed for all units before execution of the construction contract for the project, unless the IHA obtains HUD approval of an exception. Land leases for trust land must be signed and approved by BIA before construction start. The MHO Agreement must include the homebuyer's agreement to satisfy the MH contribution requirement before occupancy of the unit.

(c) *Total contribution to be furnished before occupancy.* The homebuyer cannot occupy the unit until provision of the entire MH contribution to the IHA. If the homebuyer is unable or unwilling to provide the MH contribution before occupancy of the project, the MHO Agreement for the homebuyer shall be terminated, any MH contribution paid by the homebuyer shall be refunded in accordance with § 905.446, and the IHA shall select a substitute homebuyer from its waiting list.

(d) *MH contribution in event of substitution of homebuyer.* If an MHO Agreement is terminated and a substitute homebuyer is selected, the

amount of MH contribution to be provided by the substitute homebuyer shall be in accordance with paragraph (a) of this section. The substitute homebuyer may not occupy the unit until the complete MH contribution has been made.

(e) *Disposition of contribution.* If an MHO Agreement is terminated by the IHA or the homebuyer before the date of occupancy, the homebuyer may receive reimbursement of the value of the MH contribution made plus other amounts contributed by the homebuyer, in accordance with § 905.446.

§ 905.422 Commencement of occupancy.

(a) *Notice.* (1) Upon acceptance by the IHA from the contractor of the home as ready for occupancy, the IHA shall determine whether the homebuyer has met all requirements for occupancy, including satisfaction in full of the MH contribution, and fulfillment of mandatory homebuyer counseling requirements. The IHA shall notify the homebuyer in writing that the home is available for occupancy as of a date specified in the notice, which is called the date of occupancy.

(2) If the IHA determines that the homebuyer has not fully provided the MH contribution or met any of the other conditions for occupancy by the date of occupancy, the homebuyer shall be sent a notice in writing. This notice must specify the date by which all requirements must be satisfied and shall advise the homebuyer that the MHO Agreement will be terminated and a substitute homebuyer selected for the unit if the requirements are not satisfied. (See § 905.446 and § 905.419(d).)

(b) *Credits to MH accounts and reserves.* Promptly after the date of occupancy, the IHA shall credit the amount of the MH contribution to the homebuyer's accounts and reserves in accordance with § 905.437 and shall give the homebuyer a statement of the amounts so credited.

(Approved by the Office of Management and Budget under control number 2577-0130)

§ 905.425 Inspections, responsibility for items covered by warranty.

(a) *Inspection before move-in and identification of warranties.* (1) To establish a record of the condition of the home on the date of occupancy, the homebuyer (including a subsequent homebuyer) and the IHA shall make an inspection of the home as close as possible to, but not later than, the date the homebuyer takes occupancy. (The record of this inspection shall be separate from the certificate of completion required by § 905.265(f) but

the inspections may, if feasible, be combined.) After the inspection, the IHA representative shall give the homebuyer a signed statement of the condition of the home and equipment. The homebuyer shall sign a copy of the statement, acknowledging concurrence or stating objections; and any differences shall be resolved by the IHA. This written statement of the condition of the home shall not limit the homebuyer's right to claim latent defects in construction that may be covered by warranties referenced in paragraph (a)(2) of this section.

(2) Within 30 days of commencement of occupancy of each home, the IHA shall furnish the homebuyer with a list of applicable contractors', manufacturers' and suppliers' warranties, indicating the items covered and the periods of the warranties.

(b) *Inspections during contractors' warranty periods, responsibility for items covered by contractors', manufacturers' or suppliers' warranties.* In addition to the inspection required under paragraph (a) of this section, the IHA will inspect the home regularly in accordance with paragraph (c). However, the IHA shall notify the homebuyer in writing that it shall be the responsibility of the homebuyer during the period covered by § 905.270 and subsequently for the duration of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the homebuyer.

(c) *Annual inspections.* The IHA performs inspections annually, in accordance with § 905.340(d).

(d) *Inspection upon termination of agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home after notifying the homebuyer of the time for inspection and shall give the homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 905.446).

(e) *Homebuyer permission for inspections; participation in inspections.* The homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the period of the MHO Agreement in accordance with rules established by the IHA. The

homebuyer shall be notified of the opportunity to participate in the inspection made in accordance with this section.

§ 905.428 Maintenance, utilities, and use of home.

(a) *Maintenance.* (1) *Homebuyer's responsibility for maintenance.* The homebuyer shall be responsible for routine and nonroutine maintenance of the home, including all repairs and replacements (including those resulting from damage from any cause). The IHA shall not be obligated to pay for or provide any maintenance of the home other than the correction of warranty items reported during the applicable warranty period.

(2) *Homebuyer's failure to perform maintenance.* (i) Failure of the homebuyer to perform maintenance obligations constitutes a breach of the MHO Agreement and grounds for its termination. Upon a determination by the IHA that the homebuyer has failed to perform its maintenance obligations, the IHA shall require the homebuyer to agree to a specific plan of action to cure the breach and to assure future compliance. The plan shall provide for maintenance work to be done within a reasonable time by the homebuyer, with such use of the homebuyer's account as may be necessary, or to be done by the IHA and charged to the homebuyer's account, in accordance with § 905.437. If the homebuyer fails to carry out the agreed-to plan, the MHO agreement shall be terminated in accordance with § 905.446.

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health, or safety of the occupants, or if there is an immediate risk of serious damage to the property if the condition is not corrected, the corrective work shall be done promptly by the IHA with such use of the homebuyer's accounts as the IHA may determine to be necessary, or by the IHA with a charge of the cost to the homebuyer's accounts in accordance with § 905.437.

(iii) The IHA shall perform the necessary maintenance only after the MHO agreement is terminated and the unit is vacated.

(iv) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The IHA shall give the homebuyer copies of all work orders for the home.

(b) *Homebuyer's responsibility for utilities.* The homebuyer is responsible for the cost of furnishing utilities for the home. The IHA shall have no obligation

for the utilities. However, if the IHA determines that the homebuyer is unable to provide utilities for the home, and that this inability creates conditions that are hazardous to life, health, or safety of the occupants or threaten immediate serious damage to the property, the IHA may provide the utilities on behalf of the homebuyer and charge the homebuyer's accounts for the costs, in accordance with § 905.437.

(c) *Obligations with respect to home and other persons and property.* (1) The homebuyer shall agree to abide by all provisions of the MHO Agreement concerning homebuyer responsibilities, occupancy and use of the home.

(2) The homebuyer may request IHA permission to operate a small business in the unit. An IHA may grant this authority where the homebuyer provides the following assurances and may rescind this authority upon violation of any of the following assurances:

- (i) The unit will remain the homebuyer's principal residence;
- (ii) The business activity will not disrupt the basic residential nature of the housing site; and
- (iii) The business will not require permanent structural changes to the unit that could adversely affect a future homebuyer's use of the unit. The IHA may rescind such authority whenever any of the above assurances are violated.

(d) *Structural changes.* (1) A homebuyer shall not make any structural changes in or additions to the home unless the IHA has determined that such change would not:

- (i) Impair the value of the home, the surrounding homes, or the project as a whole;
- (ii) Affect the use of the home for residential purposes; or
- (iii) Violate HUD requirements as to construction and design.

(2) Additions to the home include, but are not limited to, energy conservation items such as solar panels, wood-burning stoves, flues and insulation. Any changes made in accordance with this section shall be at the homebuyer's expense (and not from any account or reserve created under the MHO Agreement), and in the event of termination of the MHO Agreement the homebuyer shall not be entitled to any compensation for such changes or additions.

§ 905.431 Operating reserve.

(a) The IHA shall maintain an operating reserve for the project in an amount sufficient for working capital purposes, for estimated future nonroutine maintenance requirements for IHA-owned administrative facilities

and common property, for the payment of advance premiums (usually three years) for insurance, and for unanticipated project requirements approved by HUD. A contribution to this reserve shall be determined by the IHA and included in the administration charge. The amount of this contribution shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures and shall be included in the operating budget submitted to HUD for approval. If the IHA fails to manage the operating reserve properly, HUD may declare the IHA to be a "high risk" and require approval of management of the operating reserve.

(b) At the end of each fiscal year or other budget period, the project operating reserve shall be:

(1) Credited with the amount by which operating receipts exceed operating expenses of the project for the budget period, or

(2) Charged with the amount by which operating expenses exceed operating receipts of the project for the budget period, to the extent of the balance in the operating reserve.

§ 905.434 Operating subsidy.

(a) *Scope.* This section authorizes the use of operating subsidy for Mutual Help projects; establishes eligible costs; and provides for determination of operating subsidy on a uniform basis for all MH projects.

(b) *Eligible costs.* The reasonable cost of an annual independent audit is an eligible cost for operating subsidy. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes:

(1) Administration charges for vacant units where the IHA submits evidence to HUD's satisfaction that it is making every reasonable effort to fill the vacancies;

(2) Collection losses due to payment delinquencies of administration charges on the part of homebuyer families whose MHO Agreements have been terminated and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a subsequent homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously used all available homebuyer credits. Every reasonable effort shall be made to collect charges from a vacated homebuyer, including court judgments, professional collection services, etc., as appropriate;

(3) The costs of HUD-approved homebuyer counseling program(s) but not in duplication of homebuyer counseling costs funded under a development cost budget (in accordance with subpart C);

(4) HUD-approved costs for training and related travel of IHA staff and commissioners;

(5) Operating costs resulting from other unusual circumstances justifying payment of operating subsidy, if approved in advance by HUD.

(c) *Ineligible costs.* No operating subsidy shall be paid for utilities, maintenance, or other items for which the homebuyer is responsible except, as necessary, to put a vacant home in condition for a subsequent family as provided in paragraph (b)(2) of this section.

(Information requirements contained in paragraph (b)(1) of this section have been approved by the office of Management and Budget under OMB approval number 2577-0066)

§ 905.437 Homebuyer reserves and accounts.

(a) *Refundable and nonrefundable MH reserves.* The IHA shall establish separate refundable and nonrefundable reserves for each homebuyer effective on the date of occupancy.

(1) The refundable MH reserve represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's cash MH contribution or the value of the labor, materials or equipment MH contribution.

(2) The nonrefundable MH reserve also represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's share of any credits for land contributed to the project and the homebuyer's share of any credit for non-land contributions by a terminated homebuyer.

(b) *Equity accounts.*—(1) *Monthly equity payments account ("MEPA").* The IHA shall maintain a separate MEPA for each homebuyer. The IHA shall credit this account with the amount by which each required monthly payment exceeds the administration charge. Should the homebuyer fail to pay the required monthly payment, the IHA may elect to reduce the MEPA by the amount owed each month towards the administration charge, until the MEPA has been fully expended.

(2) *Voluntary equity payments account* ("VEPA"). The IHA shall maintain a separate VEPA for each homebuyer. The IHA shall credit this account with the amounts of any periodic or occasional voluntary payments (in excess of the required monthly payment) that the homebuyer may desire to make to acquire ownership of the home within a shorter period of time.

(3) *Investment of equity funds.* Funds held by the IHA in the equity accounts of all the homebuyers in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each homebuyer's equity accounts in proportion to the amount in each such account on the date of proration.

(c) *Charges for maintenance.* (1) If the IHA has maintenance work done in accordance with § 905.428(a), the cost thereof shall be charged to the homebuyer's MEPA.

(2) At the end of each fiscal year, the debit balance, if any in the MEPA shall be charged, first to the voluntary equity payments account; second, to the refundable MH reserve; and third, to the nonrefundable MH reserve, to the extent of the credit balances in that account and those reserves.

(3) In lieu of charging the debit balance in the MEPA to the homebuyer's refundable MH reserve and/or nonrefundable MH reserve, the IHA may allow the debit balance to remain in the MEPA pending replenishment from subsequent credits to the homebuyer's MEPA.

(4) The IHA shall at no time permit the accumulation of a debit balance in the MEPA in excess of the sum of the credit balances in the homebuyer's refundable and nonrefundable MH reserves, unless the expenditure is required to alleviate a hazard to the life, health or safety of the occupants, or to alleviate an immediate risk of serious damage to the property.

(d) *Disposition of reserves and accounts.* When the homebuyer purchases the home, the balances in the homebuyer's reserves and accounts shall be disposed of in accordance with § 905.440. If the MHO agreement is terminated by the homebuyer or the IHA, the balances in the homebuyer's reserves and accounts shall be disposed of in accordance with § 905.446.

(e) *Use of reserves and accounts; nonassignability.* The homebuyer shall have no right to receive or use the funds in any reserve or account except as provided in the MHO agreement, and the homebuyer shall not, without

approval of the IHA and HUD, assign, mortgage or pledge any rights in the MHO agreement or to any reserve or account.

§ 905.440 Purchase of home.

(a) *General.* The IHA provides the family an opportunity to purchase the dwelling under the Mutual Help and Occupancy Agreement (a lease with an option to purchase), under which the purchase price declines over the period of occupancy. Other methods of acquiring ownership are for the family to obtain financing to cover the purchase price from the IHA or an outside source, using such methods as a mortgage (e.g., see 24 CFR 203.43h), or a loan agreement. The homebuyer may exercise his or her option to purchase the home on or after the date of occupancy, but only if the homebuyer has met all obligations under the MHO agreement. If the homebuyer is able to obtain financing from an outside source, the IHA will release the homebuyer from the MHO agreement and terminate the homebuyer's participation in this program. For acquisition under the MHO agreement, see paragraph (e) of this section. For acquisition under other methods, see paragraph (d) of this section and § 905.443.

(b) *Purchase price and purchase price schedule.* (1) The IHA shall determine the initial purchase price of a home for the homebuyer who first occupies the home, pursuant to an MHO Agreement as follows (unless the IHA, after consultation with the homebuyer, has developed an alternative method of apportioning among the homebuyers, the amount determined in Step 1, and the alternative method has been made a part of the HUD-approved development program):

(i) Step 1: From the estimated Total Development Cost (TDC) (including the full amount for contingencies as authorized by HUD) of the project as shown in the development cost budget in effect at the time of execution of the construction contract, deduct the amounts, if any, attributable to:

(A) Relocation costs,
(B) Counseling costs,
(C) The cost of any community, administration or management facilities, including the land, equipment, and furnishings attributable to such facilities as set forth in the development program for the project, and

(D) The total amount attributable to land for the project.

(ii) Step 2: Multiply the amount determined in Step 1 by a fraction of which the numerator is the development cost standard for the size and type of

home being constructed for the homebuyer, and the denominator is the sum of the unit development cost standards for the homes of various sizes and types comprising the project.

(iii) Step 3: Determine the amount chargeable to development costs, if any, for acquisition of the homesite.

(iv) Step 4: Add the amount determined in Step 3 to the amount determined in Step 2. The sum determined under this step shall be the initial purchase price of the home.

(2) *Purchase price schedule.* Promptly after execution of the construction contract, the IHA shall furnish to the homebuyer a statement of the initial purchase price of the home, and a purchase price schedule that will apply, based on amortizing the balance (purchase price less the MH contribution) over a 25-year period at an interest rate determined by the IHA, provided that the rate does not exceed the prevailing interest rate for Veterans Administration guaranteed mortgage loans at the time the schedule is established. The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Initial purchase price and purchase price schedule for subsequent homebuyer—(1) Determination of initial purchase price.* When a subsequent homebuyer executes the Mutual Help and Occupancy Agreement, the purchase price for the subsequent homebuyer shall be the lower of the current appraised value or the current replacement cost of the home, both as determined or approved by HUD.

(2) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a purchase price schedule, showing the monthly declining purchase price over the term of the MHO agreement, commencing with the first day of the month following the effective date of the agreement.

(d) *Notice of eligibility for financing.* If the IHA offers IHA homeownership financing in accordance with § 905.443 and has funds available for that purpose, it shall determine, at the time of each examination or reexamination of the family's earnings and other income, whether the homebuyer is eligible for that financing. If the IHA determines that the homebuyer is eligible, the IHA shall notify the homebuyer in writing that IHA homeownership financing is available to enable the homebuyer to purchase the home, if the homebuyer wishes to do so and, that if the homebuyer chooses not to purchase the home at that time, all the rights of a homebuyer shall continue (including the

right to accumulate credits in the equity accounts) and all obligations under the MHO agreement shall continue (including the obligations to make monthly payments based on income). The IHA may convey ownership of the home when the homebuyer exercises the option to purchase and has complied with all the terms of the MHO agreement. The homebuyer can exercise the option to purchase only by written notice to the IHA, in which the homebuyer specifies the manner in which the purchase price and settlement costs will be paid.

(e) *Conveyance of home*—(1) *Option to purchase*. The homebuyer may exercise the option to purchase the home when the balance of the purchase price can be covered from: the amount in the two equity accounts (MEPA and VEPA); the amount in the equity accounts together with the reserves or any other funds of the homebuyer; or IHA financing together with funds from these other sources.

(2) *Amounts to be paid*. The purchase price shall be the amount shown on the purchase price schedule for the month in which the settlement date falls.

(3) *Settlement costs*. Settlement costs are the costs incidental to acquiring ownership, including the costs and fees for credit report, field survey, title examination, title insurance, inspections, attorneys other than the IHA's attorney, closing, recording, transfer taxes, financing fees and mortgage loan discount. Settlement costs shall be paid by the homebuyer who may use equity accounts or reserves available for the purchase in accordance with paragraph (e)(4) of this section.

(4) *Disposition of homebuyer accounts and reserves*. When the homebuyer purchases the home, the net credit balances in the homebuyer's equity accounts (MEPA and VEPA, as described in § 905.437), supplemented by the nonrefundable MH reserve and then the refundable MH reserve, shall be applied in the following order:

- (i) For the initial payment for fire and extended coverage insurance on the home after conveyance if the IHA finances purchase of the home in accordance with § 905.446;
- (ii) For settlement costs, if the homebuyer so directs;
- (iii) For the purchase price; and
- (iv) The balance, if any, for refund to the homebuyer.

(5) *Settlement*. A home shall not be conveyed until the homebuyer has met all the obligations under the MHO Agreement. The settlement date shall be mutually agreed upon by the parties. On the settlement date, the homebuyer shall

receive the documents necessary to convey to the homebuyer the IHA's right, title, and interest in the home, subject to any applicable restrictions or covenants as expressed in such documents. The required documents shall be approved by the attorneys representing the IHA and HUD, and by the homebuyer or the homebuyer's attorney.

(6) *IHA investment and use of purchase price payments*. After conveyance, all homebuyer funds held or received by the IHA from the sale of a unit in a project financed with grants shall be held separate from other project funds, and shall be used for modernization of IHA-owned projects, or the development, or acquisition and rehabilitation of other properties to be operated as lower income housing. Homebuyer funds held or received by the IHA from the sale to a homebuyer of a unit in a project financed by loans are subject to loan forgiveness. Homebuyer funds include the amount applied to payment of the purchase price from the equity accounts (MEPA and VEPA), any cash paid by the homebuyer for application to the purchase price and, if the IHA finances purchase of the home in accordance with § 905.446, any portion of the mortgage payments by the homeowner attributable to payment of the debt service (principal and interest) on the mortgage.

(7) *Removal of home from MH program*. When a home has been conveyed to the homebuyer, whether or not with IHA financing, the unit is removed from the IHA's MH project under its ACC with HUD. If the IHA has provided financing, its relationship with the homeowner is transformed by the conveyance to that of lender, in accordance with the documents executed during settlement.

§ 905.443 IHA homeownership financing.

(a) *Eligibility*. If the IHA offers homeownership financing, the homebuyer is eligible for it when the IHA determines that:

- (1) The homebuyer can pay (from the balance in the homebuyer's reserves or accounts, or from other sources):
 - (i) The amount necessary for settlement costs; and
 - (ii) The initial payment for fire and extended coverage insurance carried on the home after conveyance; and
 - (iii) Maintenance reserve (at the option of the IHA).

(2) The homebuyer's income has reached the level, and is likely to continue at such level, at which 30 percent of monthly adjusted income is at least equal to the sum of the monthly debt service amount shown on the

homebuyer's purchase price schedule and the IHA's estimates (subject to approval by HUD) of the following monthly payments and allowances:

- (i) Payment for fire and extended coverage insurance;
- (ii) Payment for taxes and special assessments, if any;
- (iii) The IHA mortgage servicing charge;
- (iv) Amount necessary for maintenance of the home; and
- (v) Amount necessary for utilities for the home.

(b) *Promissory note, mortgage, and mortgage amortization schedule*. (1) When IHA homeownership financing is utilized, the homebuyer shall execute and deliver a promissory note and mortgage. The mortgage shall be a first lien on the property recorded by the IHA at the BIA title plant, if applicable, and/or other Tribal approved agencies or departments used for such purposes. It shall be in a form approved by the HUD field office and shall secure performance of all the terms and conditions of the promissory note. The principal amount of the promissory note shall be equal to the amount of the unpaid balance of the purchase price of the home as determined in accordance with § 905.440.

(2) The IHA shall furnish the homebuyer at settlement with a mortgage amortization schedule based on the principal amount of the promissory note. This schedule shall provide for level monthly reduction in and complete amortization of the principal amount of the promissory note, based upon debt service needed to complete the amortization. The amortization period shall commence on the first day of the month following the date of settlement and shall end on the first day after the end of the period shown on the amortization schedule. The rate of interest, if any, shall be determined by the IHA.

(c) *Monthly payment*. The promissory note or mortgage shall require the homeowner to make a monthly payment to the IHA equal to the sum of the following:

(1) *Insurance*. An amount sufficient to provide the IHA with funds for payment of the insurance premium for fire and extended coverage insurance in an amount and on terms acceptable to HUD (which policy shall be maintained until termination of the obligation under the mortgage.)

(2) *Taxes*. An amount sufficient to pay taxes and any special assessments when next due.

(3) *Mortgage service fee.* A

representation of the IHA's monthly cost, as approved by HUD.

(4) *Mortgage debt service payment.*

As shown on the mortgage amortization schedule.

(5) *Maintenance reserve.* An amount to replenish the reserve when required.(d) *Application of monthly payment.*

Each monthly payment shall be applied by the IHA in the following order:

(1) Insurance premium;

(2) Taxes, or payments in lieu of taxes, and special assessments;

(3) Mortgage servicing charge;

(4) Monthly debt service; and

(5) Replenishment of the maintenance reserve, if applicable.

(e) *Reduced payment resulting from reduced income.* If the homeowner's family income is reduced because of circumstances beyond the homeowner's control, to a point where 30 percent of the monthly adjusted income is insufficient to pay the required monthly payment, the IHA must reduce the monthly payment using the following guidelines:

(1) The payment shall be the greater of:

(i) 30 percent of the monthly adjusted income, or

(ii) The sum of the monthly amounts for insurance, taxes and assessments, if any, and the mortgage servicing charge.

(2) The period of reduced payments should be for the minimum amount of time projected by the IHA to be needed by the family to recover from the cause of the lost income—normally no longer than 12 months.

(3) The IHA and homeowner should execute a payment plan reflecting the agreed upon reduced payment amount and term.

(4) The IHA will apply the monthly payment, to the extent that there are funds available, in the order specified in paragraph (d) of this section.

(f) *Use of maintenance reserve.* The maintenance reserve, which is to be established in the amount of \$1,500 shall be used as follows:

(1) For maintenance of the property, or for the payment of insurance, taxes, assessments, and the mortgage servicing charge, when the homeowner has no other funds reasonably available to pay for these expenses.

(2) To reimburse the IHA for the cost of maintenance provided to correct a condition threatening the life, health, or safety of the occupants; or to perform work in arresting serious damage or deterioration of the home. The IHA shall perform and charge the cost of such work pursuant to a work order.

(g) *Replenishment of maintenance reserve.* The IHA should adopt a policy

statement to address the conditions and circumstances under which the \$1,500 maintenance reserve is to be replenished by an increase of the homeowner's monthly mortgage payment. The IHA staff should discuss the replenishment with the homeowner in instances where the reserve has been drawn on for a continuous period, or to a large extent. Replenishment payments, if any, shall be in an amount by which 30 percent of the homeowner's monthly adjusted income exceeds an amount equal to the sum of the items in paragraph (d).

(h) *Sale or lease of the property.* (1) Before payment in full of the mortgage and any other amounts due the IHA under the promissory note and mortgage, the homeowner shall not sell, lease, or otherwise transfer the property, or any interest therein, without the prior written consent of the IHA.

(i) The IHA shall consent to the sale of the property upon assumption of the mortgage by a new homebuyer if:

(A) The new homebuyer meets the eligibility criteria specified in this section;

(B) The new homebuyer agrees to execute an assumption agreement for the outstanding balance of the mortgage debt; and

(C) Any proceeds of the sale are applied as specified in the promissory note and mortgage.

(ii) The IHA shall consent to the leasing of the property if the lessee and the lease documents meet the requirements specified in the promissory note and the mortgage. During the term of the sublease, the homebuyer is still obligated to ensure that monthly payments are made on time.

(iii) The IHA shall consent to a reconveyance of the property from the homeowner to the IHA, through a deed in lieu of foreclosure, for example, if there are no other liens, other than the IHA's mortgage, on the property.

(2) Once the IHA receives payment in full on the mortgage and any other amounts due the IHA, the homeowner may transfer the property without restriction from the IHA.

(i) *Disposition of servicing fees and mortgage debt service.* The amount of the mortgage servicing fees collected from the homeowner under the promissory note may be retained by the IHA and utilized as project operating receipts or to fund the replacement reserve.

(j) *Transformation of MH relationship.* Upon conveyance of the home with IHA financing, the relationship of the IHA and homebuyer is transformed to that of mortgagee (lender) and mortgagor (borrower), and

the MH program rules are no longer applicable to the unit.

§ 905.446 Termination of MHO agreement.

(a) *Termination upon breach.* (1) In the event the homebuyer fails to comply with any of the obligations under the MHO agreement, the IHA may terminate the MHO agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships. Foreclosure is an inappropriate method for enforcing termination of the homeownership agreement, which constitutes a lease (with an option to purchase). The homebuyer is a lessee during the term of the agreement and acquires no equitable interest in the home until the option to purchase is exercised.

(2) Misrepresentation or withholding of material information in applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the homebuyer's obligations under the MHO agreement. "Termination", as used in the MHO agreement, does not include acquisition of ownership by the homebuyer.

(b) *Notice of termination of MHO agreement by the IHA, right of homebuyer to respond.* Termination of the MHO agreement by the IHA for any reason shall be by written notice of termination. Such notice shall be in compliance with the terms of the MHO agreement and, in all cases, shall afford a fair and reasonable opportunity to have the homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act, if applicable, and shall incorporate all the steps and provisions needed to comply with state, local, or tribal law, with the least possible delay. (See § 905.340.)

(c) *Termination of MHO agreement by homebuyer.* The homebuyer may terminate the MHO Agreement by giving the IHA written notice in accordance with the agreement. If the homebuyer vacates the home without notice to the IHA, the homebuyer shall remain subject to the obligations of the MHO agreement, including the obligation to make monthly payments, until the IHA terminates the MHO agreement in writing. Notice of the termination shall be communicated by the IHA to the homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of funds upon termination of the MHO agreement.* If the MHO agreement is terminated, the balances in the homebuyer's accounts

and reserves shall be disposed of as follows:

- (1) The MEPA shall be charged with:
 - (i) Any maintenance and replacement cost incurred by the IHA to prepare the home for the next occupant;
 - (ii) Any amounts the homebuyer owes the IHA, including required monthly payments;
 - (iii) The required monthly payment for the period the home is vacant, not to exceed 30 days from the date of receipt of the notice of termination, or if the homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA; and
 - (iv) The cost of securing a vacant unit, the cost of notification and associated termination tasks, and the cost of storage and/or disposition of personal property.
- (2) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a debit balance in the MEPA, the IHA shall charge that debit balance, first to the VEPA; second, to the refundable MH reserve; and third, to the nonrefundable MH reserve, to the extent of the credit balances in these reserves and account. If the debit balance in the MEPA exceeds the sum of the credit balances in these reserves and account, the homebuyer shall be required to pay to the IHA the amount of the excess.
- (3) If, after making the charges in accordance with paragraphs (d)(1) and (2) of this section, there is a credit balance in the MEPA, this amount shall be refunded, except to the extent it reflects the value of land donated on behalf of the family. Similarly, any credit balance remaining in the VEPA after making the charges described above shall be refunded.
- (4) Any credit balance remaining in the refundable MH reserve after making the charges described above shall be refunded to the homebuyer.
- (5) Any credit balance remaining in the nonrefundable MH reserve after making the charges described above shall be retained by the IHA for use by the subsequent homebuyer.
- (e) *Settlement upon termination*—(1) *Time for settlement.* Settlement with the homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the homebuyer a statement of such charges. The homebuyer may obtain settlement before determination of the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant, if the homebuyer is willing to accept the IHA's estimate of

the amount of such cost. In such cases, the amounts to be charged for maintenance shall be based on the IHA's estimate of the cost thereof.

(2) *Disposition of personal property.* Upon termination, the IHA may dispose of any item of personal property abandoned by the homebuyer in the home, in a lawful manner deemed suitable by the IHA. Proceeds, if any, after such disposition, may be applied to the payment of amounts owed by the homebuyer to the IHA.

(f) *Responsibility of IHA to terminate.*

(1) The IHA is responsible for taking appropriate action with respect to any noncompliance with the MHO agreement by the homebuyer. In cases of noncompliance that are not corrected as provided further in this paragraph, it is the responsibility of the IHA to terminate the MHO agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible after a noncompliance comes to the attention of the IHA, the IHA shall discuss the matter with the homebuyer and give the homebuyer an opportunity to identify any extenuating circumstances or complaints which may exist. A plan of action may be agreed upon that will specify how the homebuyer will come into compliance, as well as any actions by the IHA that may be appropriate. This plan shall be in writing and signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the homebuyer to agree to such a plan or failure by the homebuyer to comply with the plan, the IHA shall issue a notice of termination of the MHO agreement and evict the homebuyer in accordance with the provisions of this section on the basis of the noncompliance with the MHO agreement.

(4) A record of meetings with the homebuyer, written plans of action agreed upon and all other related steps taken in accordance with paragraph (f) shall be maintained by the IHA for inspection by HUD.

(g) *Subsequent use of unit.* After termination of a homebuyer's interest in the unit, it remains as part of the MH project under the ACC. The IHA must follow its regulations for selection of a subsequent homebuyer for the unit under the MH program. (See § 905.449(g) for use of unit if no qualified subsequent homebuyer is available.)

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§ 905.449 Succession upon death or mental incapacity.

(a) *Definition of "event."* "Event" means the death or mental incapacity of all of the persons who have executed the MHO agreement as homebuyers.

(b) *Designation of successor by homebuyer.* (1) Unless otherwise provided by the IHA's occupancy policies, a homebuyer may designate a successor who, at the time of the "event", would assume the status of homebuyer, provided that at that time he or she meets the conditions stated in paragraph (c) of this section. The designation shall be made at the time of execution of the MHO agreement, and the homebuyer may change the designation at any later time by written notice to the IHA.

(c) *Succession by persons designated by homebuyer.* Upon occurrence of an "event", the person designated as the successor shall succeed to the former homebuyer's rights and responsibilities under the MHO agreement if the designated successor meets the following conditions:

(1) The successor is a family member and will make the home his or her primary residence;

(2) The successor is willing and able to pay the administration charge and to perform the obligations of a homebuyer under an MHO agreement;

(3) The successor satisfies program eligibility requirements; and

(4) The successor executes an assumption of the former homebuyer's obligations under the MHO agreement.

(d) *Designation of successor by IHA.* If at the time of the event there is no successor designated by the homebuyer, or if any of the conditions in paragraph (c) of this section are not met by the designated successor, the IHA may designate, in accordance with its occupancy policy, any person who qualifies under paragraph (c).

(e) *Occupancy by appointed guardian.* If at the time of the event there is no qualified successor designated by the homebuyer or by the IHA in accordance with the foregoing paragraphs of this section, and a minor child or children of the homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO agreement in their interest and behalf.

(f) *Succession and occupancy on trust land.* In the case of a home on trust land subject to restrictions on alienation

under federal or state law (including federal trust or restricted land and land subject to trust or restriction under state law), a person who is prohibited by law from succeeding to the IHA's interest on such land may, nevertheless, continue in occupancy with all the rights, obligations and benefits of the MHO agreement, modified to conform to these restrictions on succession to the land.

(g) *Termination in absence of qualified successor.* If there is no qualified successor in accordance with the IHA's approved policy, the IHA shall terminate the MHO agreement and select a subsequent homebuyer to occupy the unit under a new MHO agreement. If a new homebuyer is unavailable or if the home cannot continue to be used for lower income housing in accordance with the Mutual Help program, the IHA may submit an application to HUD to approve a disposition of the home, in accordance with subpart M.

§ 905.452 Miscellaneous.

(a) *Annual statement to homebuyer.* The IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance before transfer of ownership, repair or rebuilding—(1) Insurance.* The IHA shall carry all insurance prescribed by HUD, including fire and extended coverage insurance upon the home.

(2) *Repair or rebuilding.* In the event the home is damaged or destroyed by fire or other casualty, the IHA shall consult with the homebuyers as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that there is good reason why the home should not be repaired or rebuilt and the homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO agreement, and the homebuyer's obligation to make required monthly payments shall be deemed to have terminated as of the date of the damage or destruction.

(3) *Suspension of payments.* In the event of termination of a MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair

period, the IHA will use its best efforts to assist in relocating the homebuyer. If the home must be vacated during the repair period, required monthly payments shall be suspended during the vacancy period.

(c) *Notices.* Any notices by the IHA to the homebuyer required under the MHO Agreement or by law shall be delivered in writing to the homebuyer personally or to any adult member of the homebuyer's family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing and either delivered to an IHA employee at the office of the IHA, or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

(d) *Counseling of homebuyers.* The IHA shall provide counseling to homebuyers to develop a full understanding by homebuyers of their financial and social responsibilities as participants in the MH project. Each homebuyer shall be required to participate in all official counseling activities, and failure without good cause to participate in the program, shall constitute a breach of the MHO agreement.

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§ 905.455 Conversion of rental projects.

(a) *Applicability.* An IHA may apply to HUD for approval to convert any or all of the units in an existing rental project to the MH program. Any conversion of existing units shall not affect in any way the IHA's status for funding for new development.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units must be single family detached homes, or apartment/row houses for conversion to condominium/cooperative ownership. In addition, the units must have individually metered utilities and be in decent, safe and sanitary condition. The project(s) which possess the proposed conversion units must have received an approved actual development cost certificate.

(2) Tenants or other applicants to be homebuyers of the proposed conversion units must qualify for the program under § 905.416(b). The entire MH contribution required of the homebuyer must be made before the rental unit occupied by a tenant can be converted to the MH program.

(3) In the case of conversion of apartments or rowhouses to condominium or cooperative ownership, all units in a structure must be converted, with all occupants at the time of the application qualified, in

accordance with paragraph (b)(2) of this section. Any occupants who do not qualify or desire to convert must be satisfactorily relocated and replaced with qualified occupants before application for conversion of the structure.

(c) *Application process.* The IHA's application must be in the form required by HUD, including all necessary documentation. The HUD office shall review the application for legal sufficiency; Tribal acceptance; demonstration of family interest; evidence units are habitable, safe and sanitary; family qualifications as discussed in paragraph (b)(2); and financial feasibility. Where not all units in a project are proposed for conversion, the IHA's ability to operate the remaining rental units must not be adversely affected.

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§ 905.458 Conversion of mutual help projects to rental program.

(a) *Applicability.* An IHA may apply to HUD for approval to convert any or all Mutual Help project units to the rental program, wherever or whenever a homebuyer or homebuyers have lost the potential for ownership because of the inability to meet the cost of their homebuyer responsibilities.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the project must have received an approved ADCC.

(2) The remaining balances in any reserve accounts shall be accounted for individually for each unit converted in a manner consistent with project intent and in a manner prescribed by HUD.

(3) The balance remaining in the MEPA, if any, is applied first to outstanding indebtedness, then to repair of homebuyer maintenance items, and finally returned to the homebuyer.

(c) *Application process.* The IHA's application must be in the form required by HUD, including all necessary documentation. The HUD office shall review the application for legal sufficiency; Tribal acceptance; demonstration of family interest; and financial feasibility. Where not all units in a project are proposed for conversion, the IHA's ability to operate the remaining units must not be adversely affected.

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Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

§ 905.460 Purpose and applicability.

(a) *Purpose.* The purpose of the Self-Help program is to provide an alternate method of developing dwelling units that will be less costly than other methods of development, will engender community pride and cooperation, and will provide training in construction skills that will have lasting value to participants. If an IHA is interested in pursuing Self-Help development, it organizes a small group of families (six to ten) to build a substantial portion of the homes for all the families in the group, with technical assistance and supervision and materials provided by the IHA, augmented by skilled labor obtained under contract. The participants are individuals and/or families who qualify for participation in the Mutual Help Homeownership Opportunity program who have the ability to furnish their share of the required labor and who agree to participate in the cooperative effort to build homes for all members of the group.

(b) *Applicability.* Any IHA eligible for development funds may submit an application for a Self-Help Mutual Help Homeownership Opportunity project.

§ 905.463 Basic requirements.

(a) *Contracts.* A Self-Help Mutual Help Homeownership Opportunity project also involves three basic contracts in a form approved by HUD: an ACC for a Mutual Help project executed by HUD and the IHA after approval of the SH project application and after HUD approval of the development program, a Self-Help agreement executed by the participating families and the IHA before construction begins, and a Mutual Help and Occupancy agreement executed by the participating families and the IHA after construction completion. In addition, there may be organizational documents for the organization created by the participating families.

(b) *Family participation.* The project is to be organized so that a small number of families (six to ten) build a substantial portion of their homes and contract for other skilled labor and supplies. Each family must show the desire to work with other families in building their own homes and must have the time to contribute the labor necessary to perform a substantial number of the tasks required in the construction of the homes. Each family must sign a Self-Help agreement with the IHA.

(c) *IHA capacity.* The IHA must have the capacity to provide for the financial, legal, administrative, and technical responsibilities of the program. The IHA is required to provide assurance that the project will be completed, in the form of a letter of credit or its equivalent in an amount equal to ten percent of the estimated Total Development Cost Standard. The IHA may manage the project itself if it has staff with the necessary background and proven ability to perform responsibly in the field of mutual self-help and in construction; or it may contract with an organization that has this type of experience and ability for a fee that fits within the Total Development Cost Standard. Once an IHA has experience with this method of development, it is encouraged to have several groups of families participating in its Self-Help program for more cost-effective use of the construction supervisors, although each family will work only on the homes of its group.

(d) *IHA responsibilities.* In addition to the responsibilities that an IHA has under the Mutual Help Homeownership Opportunity program (including counseling concerning homeownership responsibilities), the IHA is responsible for the following tasks:

- (1) Selecting participating families from its waiting list;
- (2) Organizing and counseling the families concerning their responsibilities under the Self-Help agreement;
- (3) Preparing the application and development program for the project;
- (4) Deciding, in consultation with the group of families, how the families will share labor, how records will be kept of time worked, and how labor will be exchanged on a basis that is fair to all participating families;
- (5) Contracting for skilled labor;
- (6) Procuring materials and supplies;
- (7) Providing training in construction before and during construction activity, supervising construction on a daily basis, and providing any technical assistance needed during the construction period;
- (8) Inspecting the construction weekly; and
- (9) Terminating any family found to be in default on its obligations, in consultation with the families in the group, and replacing that family with another eligible family.

(e) *Construction tasks.* The IHA's allocation of construction tasks between those that can be done by families as opposed to skilled labor will depend on the skills and experience of the families, as well as the training that can be provided, and any applicable ordinances about the type of work that

must be done by certified persons. Examples of the construction tasks that can be allocated are the following:

- (1) *Usually suitable for participating families:*
 - (i) Wall framing and sheathing;
 - (ii) Roof and ceiling framing and sheathing;
 - (iii) Roofing;
 - (iv) Installation of siding, exterior trim, porches;
 - (v) Installation of gutters and downspouts;
 - (vi) Insulation;
 - (vii) Interior carpentry, trim, doors;
 - (viii) Installation of cabinets and counter tops;
 - (ix) Interior painting;
 - (x) Exterior painting;
 - (xi) Installation of electrical fixtures;
 - (xii) Installation of finish hardware;
- and
- (xiii) Landscaping.
- (2) *Usually suitable for skilled labor:*
 - (i) Excavation;
 - (ii) Installation of footing, foundation, columns;
 - (iii) Pouring floor slab or framing;
 - (iv) Installation of subflooring;
 - (v) Installation of windows and exterior doors;
 - (vi) Roughing in of plumbing;
 - (vii) Sewage disposal;
 - (viii) Installation of electrical system;
 - (ix) Dry wall or plaster work;
 - (x) Basement or porch floor, steps;
 - (xi) Installation of heating system;
 - (xii) Flooring;
 - (xiii) Installation of plumbing fixtures;
- and
- (xiv) Grading and paving.

(f) *Funding.* The funding for technical training and supervision of participating families will be provided through development funds, and the cost will be included in the Total Development Cost of the project. The cost of construction supervision and technical assistance shall generally be no more than 15 percent, but may not exceed 20 percent of the TDC of these self-help homes.

(g) *Applicability of Indian preference.* In the selection of contractors to perform construction supervision, skilled labor, or other work under this program, the provisions concerning preference for Indians (§ 905.165) apply. In the selection of participating families, the provisions of § 905.416 apply.

(h) *Building code.* The building code adopted by the IHA in accordance with § 905.260 will apply to the homes constructed under this program.

§ 905.466 Self-Help agreement.

(a) *Timing.* The obligations under the Self-Help agreement, executed by the IHA and the families in a group selected

by the IHA to participate in a Self-Help program, will be contingent upon approval of the development program by HUD. Each family will be obligated to be available to commence work at a time that fits the IHA's schedule for completion of prior tasks by skilled labor, but generally within 120 days of approval of the IHA's Self-Help project development program by HUD and to complete the work within a period not to exceed two years.

(b) *Pre-construction period.* The Self-Help agreement will provide that, before construction begins, the participating families will be required to organize themselves, with the assistance of the IHA, and to participate in construction skills training.

(c) *Labor contribution.* (1) The Self-Help agreement will specify the construction tasks to be performed by the participating families as their labor contribution and the construction tasks to be performed under contract by skilled laborers. The number of tasks to be performed by the participating families must constitute the vast majority of the tasks. Generally, the construction will be done in stages, with each stage of construction finished with respect to all the homes in the project before moving to the next stage.

(2) The labor performed is not subject to the labor standards specified in section 12 of the United States Housing Act of 1937, 42 U.S.C. 1437j.

(3) The Self-Help agreement will specify the circumstances under which it may be terminated.

(d) *Insurance requirements.* The families are working for themselves, and not the IHA, during the performance of their labor contribution. The Self-Help agreement will provide that the families waive any liability claim against the IHA for any injury that might occur during the development of the project. It is in the best interests of participating families to have their own insurance coverage to cover the possibility of injury. If the IHA is able to obtain insurance coverage at reasonable cost with reimbursement from the families, at their request, to cover this risk, it is encouraged to do so.

(e) *Standard provisions.* The Self-Help agreement will include provisions prohibiting kickbacks and conflict of interest.

(f) *Completion.* The Self-Help agreement will provide that upon successful completion of the family's obligations under it, the family and the IHA will execute a Mutual Help and Occupancy agreement.

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§ 905.469 Application.

(a) *General.* The application for a Self-Help development method of Mutual Help project must comply with the general requirements of § 905.407.

(b) *Need for Self-Help housing.* Evidence of the need for Self-Help housing must be submitted, including the following:

(1) The names, addresses, number of persons in the household, and annual incomes of the families selected to participate;

(2) The Self-Help agreement;

(3) Certification by the IHA that the participating families are believed to have the time and ability to fulfill their obligations under the Self-Help agreement; and

(4) Such information as the incomes and sizes of other interested families who appear to be eligible.

(c) *Ability of IHA to administer Self-Help housing.* The IHA must demonstrate its ability to administer the program by identifying the staff members who will supervise construction and provide technical assistance, and describe their experience. If the IHA plans to contract with an outside entity to perform these functions, it must follow the requirements concerning Indian preference. Regardless of the identity of the firm selected to perform this function (whether it is a Farmers Home Administration technical assistance firm or another source), the IHA should identify the firm and briefly describe its experience. The IHA also must demonstrate its capacity to administer the program, in accordance with § 905.463.

§ 905.472 Development program.

(a) In addition to complying with the requirements of § 905.225, the IHA's development program for a Self-Help project submitted to HUD must include the following:

(1) *IHA coordination plan.* The plan for organizing and implementing the development, including elements comparable to those covered in the standard Mutual Help construction contract, and the method of coordinating work of participating families and skilled contractors.

(2) *Difference in cost.* A description of how the development cost differs from the cost for a project constructed under a construction contract. This difference should reflect the labor contribution, after considering the construction supervision cost.

(3) *Special provisions for acquisition with rehabilitation projects.* A description of the repair or rehabilitation work needed on each

home to be acquired. The work needed on all the homes should be reasonably comparable in the amount of labor exchange that is required. The estimated number of hours of labor and a description of the work to be done must be provided.

(4) Certification of participation.

Certification by the IHA that the participating families have signed the Self-Help agreement and remain able to fulfill their obligations under the Self-Help agreement.

(5) Changes since application stage.

Statement of any changes in the data submitted in the application.

(b) HUD will review the development program submitted by an IHA for a Self-Help project with particular attention to the elements listed above.

§ 905.475 HUD oversight.

(a) *HUD monitoring of Self-Help development.* HUD will contact the IHA on a regular basis to determine whether any problems are developing that require additional technical assistance or consideration of the existence of default by a family or failure of the project.

(b) *Default in a Self-Help project.* (1) If the IHA determines that a participating family is failing to provide its labor contribution, as required in accordance with its Self-Help agreement, it should counsel the family about its obligations and encourage fulfillment of its responsibilities. If the failure of the family is jeopardizing the progress of the project, the IHA should declare the family in default and terminate its participation in the project. Upon termination of the participation of one family, the IHA should move expeditiously to select an alternate family to take over the responsibilities of the terminated family. If another qualified family cannot be found to assume the responsibilities of the terminated family, the unit may be converted to some other development method (e.g., force account, conventional bid, etc.) under the Mutual Help Homeownership opportunity program. Of course, the IHA must notify HUD of such difficulties in connection with HUD's monitoring responsibilities.

(2) If the IHA determines that an entire group is unable to continue its work to completion of construction, the IHA should first counsel the group about its obligations and encourage fulfillment of its responsibilities. If counseling is unsuccessful in bringing about satisfactory progress toward completion, the IHA should declare the families in default and convert the project to a regular Mutual Help

Homeownership Opportunity project. The IHA's plan for completing the project must be submitted to HUD for approval. Availability of additional HUD funding for this purpose could not be assured.

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Subpart G—Turnkey III Program

§ 905.501 Introduction.

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities Program for lower income families (Turnkey III). IHAs and families in Turnkey III units are encouraged to pursue homeownership through

(1) transfer to the Mutual Help Program for those families that are in compliance with their Homeownership Agreements;

(2) purchase of Turnkey III units by those families, if they are financially able to do so; or

(3) continuation in the Turnkey III Program.

IHAs are encouraged to consider the conversion of Turnkey III units to some other form of operation where compliance with the requirements of the Turnkey III Program has become infeasible.

(b) *Applicability.* This subpart is applicable to the operation of all Turnkey III Projects operated by IHAs.

(c) *Program framework.* (1) All Turnkey III projects shall be operated in accordance with an executed Annual Contributions Contract (ACC), which includes the "Special Provisions for Turnkey III Homeownership Opportunity Project" and Homebuyer Ownership Opportunity agreements between the IHA and the Homebuyer.

(2) A Turnkey III Project may only include units that are to be operated as such under Homebuyer Ownership Opportunity agreements, including units occupied temporarily by former homebuyers who, as a result of losing homeownership potential, have been transferred to rental status in place, pending the availability of a suitable rental unit. If for any reason it is determined that certain units should be converted to operation as conventional rental units, Mutual Help units, or some other form of operation, such units must be made a part of a conventional rental project, Mutual Help project, or such other project. However, when a homebuyer is converted to rental status while remaining in the same unit, pending availability of a satisfactory rental unit, the unit remains under the Turnkey III project.

(d) *Contracts, agreements, other documents.* All contracts, agreements and other documents referred to in this subpart must be in a form approved by HUD and no changes of any kind may be made without the written approval of HUD. Contracts, agreements and other documents include but are not limited to:

(1) The Annual Contributions Contract (ACC), including the Special Provisions for Turnkey III Projects;

(2) The Homebuyer Ownership Opportunity agreement (Turnkey III agreement);

(3) Certification of Homebuyer Status;

(4) Promissory Note for Payment Upon Resale by Homebuyer at Profit;

(5) Articles of Incorporation and By-Laws of the Homebuyer Association (HBA), if any; and

(6) Recognition Agreement Between Indian Housing Authority and the Homebuyer Association, if any.

§ 905.503 Conversion of Turnkey III units and transfer of occupants.

(a) *General.* Turnkey III Project units may be converted to operation under the Mutual Help Homeownership Program or the Rental Program and the occupants of such units may be transferred to such other form of occupancy, subject to the requirements set forth in this section. In most cases, the conversion of Turnkey III units and the transfer of Turnkey III homebuyers will require waiver of HUD regulations; accordingly, approval by the Assistant Secretary for Public and Indian Housing is required. This section is not applicable to the transfer of Turnkey III homebuyers who are in breach or default of their Turnkey III agreement; such cases are to be governed by the terms of the particular Turnkey III agreement.

(b) *Conversion of Turnkey III units—*

(1) *General requirements applicable to all conversions.* (i) The conversion must be endorsed by resolution of the Board of Commissioners and the governing body of the Tribe;

(ii) The conversion must be justified by good cause;

(iii) The conversion must identify specific projects and/or units;

(iv) The project or units must be in habitable, safe and sanitary condition;

(v) In cases where only a portion of the project is to be converted, the operation of the remaining units must be "financially feasible" (so as not to require additional operating subsidy);

(vi) The ACC must be amended to identify the number of units converted and placed under some other form of ACC; and

(vii) The project must have an approved Actual Total Development Cost Certificate (ADCC).

(2) *Special requirements for conversion of units to Mutual Help program.*

(i) Units must be single family detached units;

(ii) Units must have individually metered utility and water facilities;

(iii) The project may not be financed with bonds;

(iv) The units must be placed under a Mutual Help ACC; and

(v) Eligible homebuyers must be able to execute the Mutual Help Agreement and provide the Mutual Help contribution.

(c) *Transfer of occupants from Turnkey III units to converted units—* (1) *General requirements applicable to all transfer.* (i) Turnkey III homebuyers must be in compliance with their Turnkey III agreement;

(ii) Homebuyers should be advised of the effects of conversion of the units, termination of their Turnkey III agreements, and their transfer to another form of occupancy (including but not limited to their rights to eventual homeownership, monthly payment, etc.); and

(iii) Turnkey III agreements must be terminated in accordance with the terms of that agreement before execution of a new occupancy agreement.

(2) *Special requirements for transfer to Mutual Help program.*

(i) Potential Mutual Help homebuyers must be able to satisfy all the requirements of the Mutual Help Program and be capable of assuming the responsibilities of homeownership before transfer; and

(ii) Potential homebuyers must provide the Mutual Help contribution upon execution of the Mutual Help agreement.

(d) *Requirements for submission to HUD.* IHA requests for conversion and transfer must:

(i) Be in writing to the Assistant Secretary for Public and Indian Housing and must contain the recommendation of the HUD Regional Administrator;

(ii) Identify the project type, number of total project units, and number of units sought to be converted;

(iii) Identify the number of Turnkey III occupants that desire conversion of the unit they occupy and transfer to another form of occupancy; and

(iv) Include sufficient evidence to support all the general and/or special requirements applicable to the particular conversion or transfer as set forth in this

section and in other HUD regulations, contracts, and handbooks.

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§ 905.505 Selection of Turnkey III homebuyers.

(a) *Admission policies.* In adopting admission regulations, in accordance with § 905.301, an IHA may establish admission policies for Turnkey III projects different from those for rental or Mutual Help projects of the IHA.

(b) *Potential for homeownership.* A family shall not be selected for Turnkey III housing unless, in addition to meeting the income limits and other requirements for admission (see § 905.301): (1) The family has an income sufficient to cover the EHPA, NRM, and the estimated cost of utilities with its required monthly payment (see § 905.315); (2) the family is able and willing to meet all the obligations under the Homebuyer Ownership Opportunity Agreement; and (3) the family has at least one member who is gainfully employed, or who has an established source of continuing income.

(c) *Turnkey III waiting list.* (1) Families who wish to be considered for selection for Turnkey III housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, must also submit an application in order to be considered for a Turnkey III Project. The filing of an application for Turnkey III housing by a family that is an applicant for or occupant of Mutual Help or rental housing shall in no way affect its status with regard to the other programs; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Turnkey III housing and that have been determined to meet the admission requirements. The IHA shall maintain a Turnkey III waiting list based on date of application, suitable type or size of unit, and factors affecting preference or priority established by the IHA's regulations.

(d) *Selection and notification of homebuyers.* (1) Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list established in accordance with this section.

(2) The applicant for admission must agree to participate and cooperate fully in the IHA's counseling and training for homeownership. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

(3)(i) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (d)(1)(ii) of this section are met, each selected applicant shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(ii) Applicants who are not selected for a specific Turnkey III project shall be so notified in accordance with HUD-approved procedure. The notice shall state the reason for the applicant's rejection and that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if he or she makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice.

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§ 905.507 Homebuyer ownership opportunity agreements (HOOA).

(a) *General.* The HOOA must be executed between the IHA and the homebuyer as a condition for occupancy of a Turnkey III unit. The HOOA is a lease agreement which also provides the homebuyer with an option to purchase the home, subject to the homebuyer's compliance with certain conditions. The homebuyer acquires no equity in the home before purchase.

(b) *Pre-Existing Agreements.* (1) Turnkey III Projects in operation on the effective date of this subpart shall be governed by this subpart, except to the extent that the terms of any pre-existing Turnkey III agreements shall govern the relationship of an IHA and occupant until the termination, or cancellation of such agreement(s). If the agreement establishes a maximum or a minimum monthly payment, the terms of the agreement shall govern. However, in no event will the monthly payment charged exceed the Total Tenant Payment determined in accordance with subpart D.

(2) Pre-existing Turnkey III agreements that determined the required monthly payment in accordance with a "Schedule" developed by the IHA and approved by HUD should continue to determine the monthly payment in accordance with the schedule. This schedule is determined as follows:

(i) The operating budget for the project is based on estimated expenses for a given period of time. The amount needed to operate a particular project is called the breakeven amount. This is comprised of the Operating Expenses (see § 905.515), the total amount needed for EHPA (see § 905.517), and the total needed for NRM (see § 905.519).

(ii) The aggregate of all homebuyers' incomes is determined. (If no definition of income is stated in the homebuyer's contract, the definition in subpart D is used.)

(iii) The percentage of aggregated income needed to cover 110 percent of the breakeven amount is determined. This percentage is the one that appears in the schedule.

(c) *New agreements.* The schedule to be used for Turnkey III Agreements executed after August 1, 1982 shall comply with the provisions of §§ 905.315-905.325 of this part.

§ 905.509 Responsibilities of homebuyer.

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the IHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds, and equipment in good repair, condition, and appearance, so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating equipment, and other component parts of the dwelling. It also includes all interior painting and the maintenance of grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the NRM, described in § 905.519.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by members of the homebuyer family or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the IHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the IHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the IHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the IHA and the HBA.

(e) *Use of home.* (1) A homebuyer shall not

(i) Sublet the home without the prior written approval of the IHA and HUD,

(ii) Use or occupy the home for any unlawful purpose nor for any purpose deemed hazardous by insurance companies on account of fire or other risks, or

(iii) Provide accommodations (unless approved by the HBA and the IHA) to boarders or lodgers.

(2) The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the IHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of the family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the IHA has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the development as a whole, or (2) affect the use of the home for residential purposes, or (3) violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the IHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the IHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the IHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant. The homebuyer or representative and a representative of the HBA may join in any inspections by the IHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of the home and in maintenance of common property.

(j) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, the following conditions apply:

(1) A homebuyer shall not assign any right or interest in the home or any interest under the Homebuyer Ownership Opportunity Agreement

without the prior written approval of the IHA and HUD;

(2) In the event of death, mental incapacity, or abandonment of the family by the homebuyer, the person designated as the successor in the Homebuyer Ownership Opportunity agreement shall succeed to the rights and responsibilities under the agreement if that person is an occupant of the home at the time of the event and is determined by the IHA to meet all of the standards of potential for homeownership. Such person shall be designated by the homebuyer at the time the Homebuyer Ownership Opportunity agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation, or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the IHA may consider as the homebuyer any family member who was an occupant at the time of the event and who meets the standards of potential for homeownership;

(3) If there is no qualified successor in accordance with paragraph (j)(2) of this section, and no minor child of the homebuyer's family is in occupancy, the IHA shall terminate the agreement and another family shall be selected. Where a minor child or children of the homebuyer's family is in occupancy, and an appropriate adult(s) who has been appointed legal guardian of the children is able and willing to perform the obligations of the Homebuyer Ownership Opportunity agreement in their interest and on their behalf, then in order to protect continued occupancy and opportunity for acquisition of ownership of the home, the IHA may approve the guardian(s) as occupants of the unit with a duty to fulfill the homebuyer obligations under the agreement.

§ 905.511 Homebuyers' association (HBA) and homeowners' association (HOA).

(a) *General.* The HBA and HOA are separate and distinct organizations with different functions. The HOA may hold title to and be responsible for maintenance of common property, while the HBA has more general service and representative functions. While all residents are members of the HBA, only those who have acquired title to their homes are members of the HOA.

(b) *HBA.* Except where the homes are on scattered sites (noncontiguous lots throughout a multi-block area with no common property), or where the number of homes in the development may be too few to support an HBA, each Turnkey III development shall have an HBA. For such cases, a modified form of

homebuyers association may be called for or a less formal organization may be desirable. This decision shall be made jointly by the IHA and the homebuyers, acting on the recommendation of HUD.

(1) *Organization.* An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyer Ownership Opportunity agreement or who are homeowners. Each family shall automatically become a member of the HBA, and the HBA shall be the representative of all such families. The functions of the HBA shall be set forth in its articles of incorporation and by-laws. The IHA shall assist the HBA in its organization and operation to the extent possible.

(2) *Funding.* The IHA may provide non-cash contributions to the HBA, such as office space, as well as cash contributions, which shall be provided for in the annual operating budgets of the IHA. The cash contributions shall be in an amount provided for in the IHA budget and approved by HUD and shall be subject to any HUD restrictions on funding, but shall not exceed \$3.00 per year per dwelling unit.

(c) *HOA.* A homeowners' association means an association comprised of homeowners, to which the IHA conveys ownership of common property, and which thereafter has responsibilities with respect to the common property.

§ 905.513 Breakeven amount and application of monthly payments.

(a) *General.* The breakeven amount for a project is the minimum average monthly amount required to provide funds for operating expenses (§ 905.515), the Earned Home Payments Account (EHPA) (§ 905.517), and the Nonroutine Maintenance Reserve (NRMR) (§ 905.519). A separate breakeven amount is established for each size and type of dwelling unit, as well as for the project as a whole. The breakeven amount for EHPA and NRMR will vary by size and type of dwelling unit. Similar variations may occur for operating expenses. The breakeven amount does not include the monthly allowance for utilities for which the homebuyer pays directly.

(b) *Application of monthly payments.* The IHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA;

(2) To the credit of the homebuyer's NRMR; and

(3) For payment of monthly operating expense, including contributions to the operating reserve.

(c) *Excess over breakeven.* When the homebuyer's required monthly payment exceeds the applicable breakeven amount, the excess shall constitute additional project income and shall be deposited and used in the same manner as other project income.

(d) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable breakeven amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (*i.e.*, as a reduction of project income). In all cases, the homebuyer payment must be sufficient to cover the EHPA and the NRMR, which shall be credited with the amount included in the breakeven amount for these accounts, but only to the extent that the homebuyer's required monthly payment is sufficient for this purpose. Insufficient homebuyer income to cover the EHPA and the NRMR constitutes a loss of homeownership potential and eligibility for continuation in the Turnkey III program. (See §§ 905.505(b) and 905.503(c).)

§ 905.515 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, etc.;

(2) *Homebuyer services.* IHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the IHA as part of operating expense;

(4) *Routine maintenance—common property.* For community building, grounds and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the IHA's responsibility for maintenance;

(5) *Protective services.* The cost of supplemental protective services paid by the IHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds,

and unanticipated items for non-dwelling structures.

(b) Monthly operating expense rate.

(1) The monthly operating expense rate for each fiscal year shall be established on the basis of the IHA's HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD regulations, contracts, and handbooks.

(2) If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the differences.

(c) *Provision for common property maintenance.* During the period the IHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homeowners. During such period, this amount shall be computed on a pro-rata basis of the total number of homes in the development. After the homeowners association assumes responsibility for maintenance of common property, the monthly operating expense shall include an amount equal to the monthly assessment by the homeowners' association for the remaining homes owned by the IHA (see paragraph (a)(7) of this section for nonroutine maintenance of common property).

(d) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

§ 905.517 Earned Home Payments Account (EHPA).

(a) *Credits to the account.* The IHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of his required monthly payment equal to the IHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homeowner's home, shall be set aside in the EHPA. In addition, this account shall be credited with:

(1) Any voluntary payments made pursuant to paragraph (f) of this section, and

(2) Any amount earned through the performance of maintenance as provided in paragraph (d) of this section and 905.519(c).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 905.509(a), the IHA shall arrange to have the work done in accordance with the procedures established by the IHA and the HBA, and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the IHA and HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the IHA (see § 905.519), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* (1) The homebuyer may exercise his or her option to buy the home by paying the applicable purchase price, only after satisfying the following conditions precedent:

(i) Within the first two years of the homebuyer's occupancy, the homebuyer has achieved a balance in his or her EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section;

(ii) The homebuyer has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement;

(iii) The homebuyer has rendered, and is continuing to render, satisfactory performance of homebuyer responsibilities to the HBA.

(2) When the homebuyer has met these conditions precedent, the IHA shall give the homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to the EHPA. If the homebuyer fails to meet either the obligation to achieve the minimum EHPA balance, as specified, or the obligation thereafter to continue adding to EHPA, the IHA and the HBA shall investigate and take appropriate corrective action, including termination of the agreement by the IHA in accordance with § 905.529.

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only

pursuant to a prior written agreement between the homebuyer and the IHA (or the homeowners' association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the IHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the IHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the IHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semiannually, the IHA shall prepare a statement showing

(i) the aggregate amount of all EHPA balances;

(ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and

(iii) the aggregate uninvested balance of all the homebuyers' EHPAs.

This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period than anticipated under the original schedule, the homebuyer may, either periodically or in a lump sum, voluntarily make payments over and above the required monthly payments. Such voluntary payments shall be deposited to his credit in the homebuyer's EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the IHA, a homebuyer's EHPA may be used to pay the delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the IHA or the HBA.

(h) *Annual statement to homebuyer.* The IHA shall provide an annual statement to each homebuyer specifying at least the amount in the EHPA, and the amount in the NRMR. During the year, any maintenance or repair done on the dwelling by the IHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for his or her home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 905.525.

(j) *Application of EHPA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity agreement with the IHA is terminated (§ 905.529) or if the homebuyer vacates the home (see § 905.509(j)), the IHA shall charge against the homebuyer's EHPA the amounts required to pay:

(i) The amount due the IHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 905.509; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 905.509.

(2) If the EHPA balance is not sufficient to cover all of these charges, the IHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the IHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he or she vacates even though the actual cost of such repair has not yet been determined, if the homebuyer has given the IHA notice of intention to vacate at least 30 days before the date the family vacates and if the amount to be charged against the EHPA for such repairs is based on the IHA's estimate of the cost thereof (determined after

consultation with the appropriate representative of the HBA).

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§ 905.519 Nonroutine maintenance reserve (NRMR).

(a) *Purpose of reserve.* The IHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the IHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyer Ownership Opportunity agreement, taking into consideration the type of construction and dwelling equipment. This schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This schedule shall be prepared by the IHA and approved by HUD. The schedule shall be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The IHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the IHA covering the nature and

scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by the warranty, or even though covered by the warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the IHA shall pay such balance to the homeowner at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the IHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the IHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semiannually, the IHA shall prepare a statement showing

(i) The aggregate amount of all NRMR balances,

(ii) The aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and

(iii) The aggregate uninvested balance of the NRMRs.

A copy of this statement shall be made available to any authorized representative of the HBA.

§ 905.521 Operating reserve.

(a) *Purpose of the reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the project, the IHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the project. The purpose of this reserve is to provide funds for:

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures;

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty;

(3) Working capital, including funds to cover a deficit in a homebuyer's NRMR until such deficit is offset by future monthly payments by the homeowner or a settlement in the event the homebuyer should purchase; and

(4) A deficit in the operation of the project for a fiscal year, including any deficit resulting from monthly payments totaling less than the breakeven amount for the project.

(b) *Nonroutine maintenance—common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the breakeven amount) established for the fiscal year shall be determined by the IHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the IHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development. When the operating reserve reaches the maximum

authorized in paragraph (c) of this section, the breakeven (monthly operating expense) computations for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may be retained by the IHA at the end of any fiscal year shall be the sum of

(1) One-half of total routine expense included in the operating budget approved for the next fiscal year and

(2) One-third of total breakeven amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD.

Total routine expense means the sum of the amounts budgeted for administration, homebuyers' services, IHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense.

(d) *Transfer to homeowners' association.* The IBA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners' association. When the homeowners acquire voting control, the homeowners' association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners' association a portion of the operating reserve then held by the IHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (c) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: Obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve; and multiply the actual operating reserve balance by this percentage.

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve, this excess shall be applied to the operating deficit of the project, if any, and any remainder shall be paid to HUD, or retained by the IHA in a replacement reserve if an ACC

amendment has been executed implementing loan forgiveness. Following the end of the fiscal year in which the last home has been conveyed by the IHA, the balance of the operating reserve held by the IHA shall be paid to HUD, or retained by the IHA in a replacement reserve if an ACC amendment has been executed implementing loan forgiveness, provided that the aggregate amount of payments by the IHA under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the project.

§ 905.523 Operating subsidy.

Operating subsidy may be paid by HUD, subject to the availability of funds for this purpose and at HUD's sole discretion, to cover an operating deficit as approved by HUD in an operating budget submitted by an IHA for a Turnkey III project. However, operating subsidy or project funds may not be used to establish or maintain the homebuyer reserve accounts. Operating subsidy or project funds may be used on a temporary basis to pay the cost of utilities for an individual unit by way of a utility reimbursement when a homebuyer has insufficient tenant income to cover even the utilities. In such a case, the inability of the homebuyer to pay utilities constitutes a loss of homeownership potential and continuing eligibility for the Turnkey III program. (See § 905.505(b) and § 905.503(c)(3).)

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§ 905.525 Achievement of ownership.

(a) *Original homebuyer.* (1) The homebuyer may exercise the option to purchase the home and achieve ownership when the amount in his or her EHPA, plus such portion of the NRMR as he or she wishes to use for the purchase, is equal to the purchase price as shown at that time on the homebuyer's purchase price schedule plus all incidental costs. For this purpose, incidental costs mean the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the IHA's attorney, mortgage application, closing and recording, and the transfer taxes and loan discount payment, if any. If for any reason title to the home is not conveyed to the homebuyer during the month in which the combined total in the EHPA and designated portion of the NRMR equals the purchase price, the purchase price

shall be fixed as the amount specified for that month and the homebuyer shall be refunded (i) the net additions, if any, credited to his or her EHPA after that month, and (ii) such part of the monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the breakeven amount attributable to the unit and the interest portion of the debt service shown in the purchase price schedule.

(2) Where the sum of the purchase price and incidental costs is greater than the amounts in the homebuyer's EHPA and NRMR as described in paragraph (a)(1) of this section, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on the homebuyer's purchase price schedule for the month in which the settlement date for the purchase occurred.

(3) The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyer's income and the amount of credit which the homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

(b) *Subsequent homebuyer.* (1) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be an amount equal to (i) the purchase price shown in the initial homebuyer's purchase price schedule as of the date of the agreement with the subsequent homebuyer plus (ii) the amount, if any, by which the appraised fair market value of the home, determined or approved by HUD as of the same date, exceeds the purchase price specified in paragraph (b)(1)(i) of this section.

(2) *Purchase price schedule.* The subsequent homebuyer's purchase price schedule shall be the same as the unexpired portion of the initial homebuyer's purchase price schedule except that where the purchase price includes an additional amount as specified in paragraph (b)(1)(ii) of this section, the initial homebuyer's purchase price schedule shall be supplemented by an additional purchase price schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial homebuyer's purchase price schedule.

(3) *Residual receipts.* After payment in full of the IHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the IHA shall retain all residual receipts from the operation of the project in a replacement reserve, including

payments received on account of any additional purchase price schedules applicable to the homes.

(4) *Transfer of title to homebuyer.* When the homebuyer is to obtain ownership, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer shall pay the required amount of money to the IHA, sign the promissory note in accordance with § 905.527, and receive a deed for the home.

§ 905.527 Payment upon resale at profit.

(a) *Promissory note.* (i) When a homebuyer achieves ownership, the homebuyer shall sign a note obligating him or her to make payment to the IHA, subject to the provisions of paragraph (a)(2) of this section, in the event he or she resells the home at a profit within 5 years of actual residence in the home after becoming a homeowner. If, however, the homeowner should purchase and occupy another home within one year (18 months in the case of a newly constructed home) of the resale of the Turnkey III home, the IHA shall refund to the homeowner the amount previously paid under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2)(i) The note to be signed by the homebuyer pursuant to paragraph (a)(1) of this section shall be a noninterest-bearing promissory note to the IHA. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a second mortgage.

(ii) The initial amount of the note shall be computed by taking the appraised value of the home at the time the homebuyer becomes a homeowner and subtracting the homebuyer's purchase price plus incidental costs (as described in § 905.525(a)(1)) and the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as a homeowner, with the note terminating at the end of the five-year period of residency, as determined by the IHA.

(iii) To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of:

(A) the homebuyer's purchase price plus incidental costs;

(B) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and;

(C) the increase in value of the home, determined by appraisal, due to improvements paid for as a homebuyer (with funds from sources other than the EHPA or NRMH) or as a homeowner.

(3) Amounts collected by the IHA under such notes shall be retained by the IHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (i) to reduce the IHA's capital indebtedness on the project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the IHA may then have with HUD.

(b) *Residency requirements.* The five-year note period does not end if the homeowner rents or otherwise does not use the home as his or her principal place of residence for any period within the first five years after achieving ownership. Only the actual amount of time the homeowner is in residence is counted, and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request the IHA to release him or her from the note, and the IHA shall do so.

§ 905.529 Termination of Homebuyer Ownership Opportunity agreement.

(a) *Termination by IHA.* (1) In the event the homebuyer should breach the Homebuyer Ownership Opportunity agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, by failure to comply with any of the other homebuyer obligations under the agreement, by loss of homeownership potential (beyond a temporary, unforeseen change in circumstances) (see § 905.503(c)(3)), an income that requires outright purchase (see § 905.525(b)), the IHA may terminate the agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (a)(2) of this section.

(2) Notice of termination by the IHA shall be in writing. Such notice shall state:

- (i) The reason for termination;
- (ii) That the homebuyer may respond to the IHA, in writing or in person,

within a specified reasonable period of time regarding the reason for termination;

(iii) That in such response the homebuyer may be represented by the HBA;

(iv) That the IHA will consult the HBA concerning this termination;

(v) That unless the IHA rescinds or modifies the notices, the termination shall be effective at the end of the 30-day notice period; and

(vi) That, in the case of termination as a result of loss of homeownership potential when the homebuyer is otherwise in compliance with the agreement, the family will be offered a transfer to a rental unit (whether or not in concert with a conversion of that unit to the rental program).

(A) If a rental unit of appropriate size is available, the family will be notified of a transfer to that unit.

(B) If no other unit is then available and the homebuyer's current unit is not to be converted to rental, the family will be notified that it may remain in place until an appropriate rental unit becomes available (in which case the unit remains under the Turnkey III project).

(C) Otherwise, the notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice.

(D) The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice.

(b) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyer Ownership Opportunity agreement by giving the IHA 30 days notice in writing of this intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the IHA, the agreement shall be terminated automatically and the IHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(c) *Transfer to the rental program.* In the event of termination of the Homebuyer Ownership Opportunity agreement by the IHA or by the homebuyer with adequate notice, the homebuyer may be transferred to a suitable unit in the rental program, in accordance with § 905.503(c)(3)(ii) or terminated from occupancy. If the homebuyer is transferred to the rental program, the amount in the homeowner's EHPA shall be paid in accordance with § 905.517(j).

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Subpart H—Lead-Based Paint Poisoning Prevention—Reserved

Subpart I—Comprehensive Improvement Assistance Program

§ 905.601 Purpose and applicability.

(a) Section 14 of the United States Housing Act of 1937 establishes the Comprehensive Improvement Assistance Program (CIAP), authorizing the Department of Housing and Urban Development (HUD) to provide financial assistance to Indian Housing Authorities (IHAs) to improve the physical condition and upgrade the management and operation of existing Indian housing projects to assure that such projects continue to be available to serve lower income families. These physical and management improvements are funded by capital grants provided under section 5(c) of the Act. This subpart prescribes the requirements and procedures for the Indian Housing CIAP.

(b) This subpart applies to IHA-owned lower income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to section 23 Leased Housing Bond-Financed projects, for which IHAs request assistance under the CIAP. This subpart also applies to the implementation of modernization programs which were approved before FY 1989. This subpart does not apply to projects under the section 23 Leased Housing Non-Bond Financed Program, and the section 23 and section 8 Housing Assistance Payments Programs.

(c) See § 905.120 for general requirements of Federal statutes other than the Act that apply to modernization under this subpart.

§ 905.605 Eligible costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 905.670. These standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the IHA shall comply with subpart M.

(b) *Management improvement costs—*

(1) *Eligibility.* Management improvements that are project-specific or IHA-wide in nature are eligible modernization costs only under comprehensive modernization, subject to all of the following conditions:

- (i) The management improvements are necessary to correct identified

management problems and to sustain the physical improvements at the project to be comprehensively modernized;

(ii) The management improvements require additional funds for implementation and the funds are not available from other sources;

(iii) The combined costs for management improvements and planning under paragraph (d) of this section do not exceed 10 percent of the total estimated physical improvement costs for a multi-stage project (from all fiscal years), unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed five percent of the funds available to the HUD office in a particular FFY;

(iv) Management improvement costs are funded only for the implementation period of the physical improvements. In rare cases, the HUD office may approve a longer period, up to a maximum of five years, where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements; and

(v) Where an approved modernization program includes management improvements that involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible management areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial and accounting control systems of the IHA that are related to the project to be modernized;

(ii) Adequacy and qualifications of personnel employed by the IHA in the management and operation of the project to be modernized, for each significant category of employment;

(iii) Adequacy and efficacy of the following for the project to be modernized:

(A) Tenant programs and services, including certain drug elimination activities;

(B) Tenant and project security;

(C) Tenant selection and eviction;

(D) Occupancy;

(E) Rent collection;

(F) Maintenance; and

(G) Equal opportunity; and

(iv) Resident management corporations under paragraph (i) of this section.

(c) *Relocation and moving costs—(1) Temporary relocation.* The following policies cover residential tenants who are moved temporarily due to rehabilitation or demolition of a project assisted under this subpart, but are offered the opportunity to return to the same project at the same site, although not necessarily the same unit or building in the project. The IHA shall provide such tenants:

(i) All actual reasonable moving and related costs incurred in connection with the temporary relocation, by either undertaking the move itself or reimbursing for such costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of: the date and approximate duration of the temporary relocation; the suitable, decent, safe, and sanitary temporary housing that will be made available; and the provisions of paragraph (c)(1)(i) of this section.

(2) *Relocation assistance for displaced persons.* An IHA must provide relocation assistance to displaced persons, as defined in paragraph (c)(6)(i) of this section, at the levels described in, and in accordance with, the provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601.

(3) *Real property acquisition requirements.* The acquisition of real property for a project by an IHA is subject to the URA and the requirements described in 49 CFR part 24, subpart B, whether it is organized pursuant to State law or Tribal law.

(4) *Responsibility of the IHA.* The IHA shall certify compliance with URA and 49 CFR part 24 and with the requirements of this section. This certification shall be included in the agreement between HUD and the IHA. The cost of assistance required by this section may be paid from local public funds or tribal funds, funds provided in accordance with this subpart, or funds available from other sources.

(5) *Appeals.* A person who disagrees with the IHA's determination concerning a payment or other assistance required by this section may file a written appeal of that determination with the IHA. The appeal procedures to be followed are described in 49 CFR 24.10.

(6) *Definition of displaced person.* (i) The term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily, as a

direct result of acquisition, rehabilitation, or demolition for a project assisted under this subpart. Permanent, involuntary moves for an assisted project include:

(A) A permanent move from the real property (project/site) following notice by the IHA to move permanently from the property, if the move takes place on or after the date that HUD approves the IHA's application for assistance;

(B) A permanent move from the real property that occurs before HUD's approval of the IHA's application, if the IHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation or demolition for a project;

(C) A permanent move from the real property by a tenant-occupant of a dwelling unit that occurs after the execution of the ACC between the IHA and HUD if (1) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same project/site following the completion of the project at a rent, including estimated average utility costs, that does not exceed the greater of the tenant's rent and estimated average utility costs before the initiation of negotiations (as defined in 49 CFR 24.2(k)), or 30 percent of gross household income; or (2) the tenant has been required to relocate temporarily as described in paragraph (c)(1) of this section, but the tenant is not offered payment for all actual reasonable moving and related expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or (3) the tenant is required to move to another unit in the same project/site, but is not offered reimbursement for all moving and related expenses incurred in connection with the move.

(ii) A person shall not qualify as a displaced person, if:

(A) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and the IHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after HUD approval of the application and, before commencing occupancy, received written notice of the expected displacement;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) The IHA determines and HUD concurs that the person was not displaced as a direct result of

acquisition, rehabilitation, or demolition for the project.

(iii) The IHA may, at any time, request a HUD determination as to whether a displacement is or would be covered by 49 CFR part 24.

(d) *Planning costs.* Planning costs necessary for developing the application (i.e., costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after application approval. Financially distressed IHAs may request approval from HUD for up-front funding of planning costs where the HUD office determines that developing the application would otherwise present an undue financial hardship. For this purpose, a financially distressed IHA is an IHA that has an operating reserve level of 20 percent or less of its authorized maximum or other level as determined by HUD, as shown on the latest year-end financial statement. Not more than five percent of the funds available to the HUD office in a particular FFY shall be used for planning costs.

(e) *Administrative costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (i.e., costs to be incurred after modernization program approval) are eligible modernization costs, as follows:

(1) *Nontechnical and technical salaries.* The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the IHA, authorized by the HUD office, and reflected by an appropriate revision to the IHA's operating budget.

(2) *Employee benefit contributions.* IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Homeownership projects.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, and cost-effective energy conservation. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible

modernization costs for homeownership projects.

(g) *Resident management corporations.* Eligible modernization costs include use of management improvement funds to assist a resident management corporation, as defined in § 905.355, to develop its management capabilities and carry out management improvements identified as IHA-wide or project-specific in nature, under the terms of a management contract between the IHA and the resident management corporation. Such funding is subject to the limitations indicated in paragraph (b) of this section.

§ 905.610 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the application.

(b) *IHA consultation with local officials and tenants/homebuyers.* The IHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in § 905.620 and § 905.625. Before developing the application, the IHA shall consult with local officials as to whether the proposed comprehensive, special purpose, or homeownership modernization is financially feasible and will result in long-term physical and social viability of the project.

(c) *Application.* The IHA shall submit to HUD an application, in a form prescribed by HUD, which shall include, but not be limited to the following:

(1) A five-year funding request plan, which includes the IHA's estimate of the comprehensive modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects sufficient to meet the modernization and energy conservation standards in § 905.670, including any special purpose and homeownership needs, as well as any emergency needs in the current FFY.

(2) A preliminary assessment of the total physical and management needs of each project for which the IHA is requesting comprehensive modernization and of the specialized needs of each project for which the IHA is requesting special purpose, emergency or homeownership modernization funds in the current FFY.

(3) For each project proposed for comprehensive modernization in the current FFY, an identification of and an estimate of the total costs of replacement of the equipment, systems, or structural elements that would

normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer.

(4) A resolution by the IHA Board of Commissioners, approving the application and containing certifications as required by HUD.

(5) Other data related to the operation of the program, as may be required to comply with other Federal laws and regulations.

(d) *HUD screening and review.* (1) The HUD office shall screen and review the applications, and select applications for further processing, on the basis of such factors as the extent and urgency of the need and the IHA's management and modernization capability.

(2) Management capability will be deemed to be adequate unless, in accordance with § 905.135, HUD has determined that management practices are inadequate. Among the IHA practices considered for this determination are the management, financial, and accounting controls; tenant programs and services; tenant and project security; tenant selection and eviction; occupancy; and maintenance.

(3) Modernization capability is adequate if the IHA obligates approved modernization funds within the HUD-approved schedule, except in circumstances beyond the IHA's control, and the IHA's expenditure of modernization funds assures the long-term social and physical viability of the modernized units. Funds are considered obligated when the IHA awards a contract or starts force account work for the modernization project. Circumstances beyond the IHA's control may be found by the HUD office in such cases as delays resulting from litigation, environmental review or strikes.

(e) *IHA preparation for joint review.* The IHA shall prepare for the joint review by:

(1) Reaching agreement with the HUD office on the specific project(s) to be covered during the joint review;

(2) Completing an assessment of the needs of each project for which the IHA is requesting funds in the current FFY. The IHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and

handicapped families and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which the IHA is requesting emergency or homeownership modernization;

(3) For each project proposed for comprehensive modernization, completing:

(i) A project operating budget for each 12-month period covered by the plan, excluding modernization costs; and

(ii) An estimate of the financial resources to be available from all sources and the amount of modernization funds to be requested for each 12-month period covered by the plan; and

(4) Reviewing the other factors to be covered during the joint review as prescribed by HUD.

(f) *Joint review.* The IHA and the HUD office shall conduct an on-site review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreement on the IHA needs. The joint review shall include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive modernization approach.* HUD will fund proposed comprehensive modernization in one stage, or, on an exception basis, in more than one stage—not to exceed a total of five stages, subject to future fund availability. Grounds for exception include an IHA's lack of management capability, as determined in accordance with § 905.135, or lack of modernization capability, as described in paragraph (d) of this section (which necessitates multi-stage funding).

(1) *One-stage funding.* Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, out of funds for a single FFY, under one application.

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of the modernization funds for all required physical and management improvements at the project shall be approved in the fewest number of stages that are feasible, over several different FFYs, with the total number of stages not to exceed five. The first stage will include funds for architectural/engineering work and/or a portion of the physical improvements. Management improvements may be included in the

first stage to the extent they are eligible costs under § 905.605(b).

(i) *First stage.* At the first stage of funding, the application shall include a comprehensive assessment of the project's physical and management improvement needs and a plan under paragraph (i)(2) of this section addressing only the work items to be completed during this stage. When approving the first stage, the HUD office will indicate the approximate balance of the funds required to complete the comprehensive modernization, but also will indicate that future funding will be subject to all of the following conditions: the availability of funds, satisfactory progress by the IHA in obligating first stage and subsequent stage funds, IHA submission of additional documents, and IHA compliance with HUD regulatory and statutory requirements.

(ii) *Subsequent stages.* Where the IHA is requesting funds for a subsequent stage of a multi-stage comprehensive modernization, the HUD office will determine whether the IHA has made satisfactory progress in obligating prior stage funds, whether it has submitted necessary additional documents, and whether it has complied with HUD regulatory and statutory requirements. If the IHA has not satisfied these conditions, the HUD office will not approve that subsequent stage of funding at this time. The IHA submission for any subsequent stage should not duplicate items previously submitted.

(3) *Implementation.* After the application for each stage is approved, the IHA and the HUD office shall agree on an implementation period that is appropriate for that funding stage, not to exceed five years for any stage from the date on which that stage is first funded.

(h) *HUD funding decisions.* After all of the joint reviews, the HUD office will determine whether the IHA will be approved for funding and whether any further modifications to the application are required, including IHA submission of the budget. HUD will give preference to IHAs that request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant life, health, or safety, or are related to fire safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation.

(2) Group 2, projects:

(i) Having conditions that threaten tenant life, health, or safety or having a significant number (10 percent or more) of vacant or substandard units;

(ii) Located in IHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization); and

(iii) Within this group, the Secretary may give priority to additional factors, such as whether the project is at the second or subsequent stage of comprehensive modernization, and the cost benefit.

(3) Group 3, other projects located in IHAs that have demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for any FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

(i) *ACC amendment.* After HUD approval of the application, HUD and the IHA shall enter into an ACC amendment for modernization funds.

(j) *Implementation schedule.* After HUD executes the ACC, the IHA shall submit for HUD approval an implementation schedule for each project in the approved modernization program.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under OMB Control Number 2577-0048. The information collection requirements contained in paragraph (c) were approved under OMB control numbers 2577-0044 and 2577-0047. The information collection requirements contained in paragraph (j) were approved under OMB control number 2577-0065)

§ 905.615 Modernization project.

(a) *Modernization projects.* For purposes of funding modernization, each modernization program approved for an IHA shall be treated as a separate modernization project. The modernization project may include improvements to one or more developments. Improvements to a single development may be included in more than one modernization project.

(b) *ACC.* HUD and the IHA shall enter into an ACC amendment for each modernization project. The ACC amendment shall require lower income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of

homeownership units in accordance with the terms of the ACC).

(c) *Declaration of trust.* The IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate the individual projects receiving modernization grant funds in accordance with the ACC, the Act, and HUD regulations and requirements.

(d) *Other program requirements.* The IHA shall comply with 24 CFR part 85, except as modified by § 905.640, and with other program requirements, as enumerated in § 905.120. In addition, in accordance with the ACC, the IHA shall carry insurance, as prescribed by HUD, to cover the additional exposures created by the modernization activities and to reflect the increased value of the buildings after modernization.

§ 905.620 Tenant participation.

For a rental project only, before submission of the application, the IHA shall consult with the tenants (including, for purposes of this section, tenant organizations and resident management corporations, if any) regarding its intent to submit an application for modernization funds. Before the joint review, the IHA shall notify the tenants of the project to be modernized of the proposed modernization program, give tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. At the Joint Review, the IHA shall provide the tenants and HUD with a copy of, and an evaluation of, tenant recommendations, indicating the reasons for IHA acceptance or rejection, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, the IHA shall inform the tenants of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature, affecting the life, health, and safety of tenants, which are processed in a "fast track" mode outside the normal processing schedule. However, the IHA shall inform tenants of approved emergency work items.

(Approved by the Office of Management and Budget under OMB control number 2577-0048)

§ 905.625 Homebuyer participation.

(a) For a homeownership project only, before the joint review, the IHA shall discuss the modernization program with the homebuyer families of the project to be modernized and advise them of the

effect of the modernization on the terms of the homebuyer agreements. The IHA shall afford the homebuyer families a reasonable opportunity to present their views on the proposed program and give full and serious consideration to their recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need.

(b) The IHA shall inform each homebuyer family that:

(1) To participate, it must be in substantial compliance with the terms of its homebuyer agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 906.630;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The IHA shall provide each homebuyer family with a copy of the IHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to the HUD office, the estimated cost of the proposed modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its homebuyer agreement will be amended upon approval of the application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 905.630.

(e) Any homebuyer family may decline to participate without risk to the homebuyer status.

(f) Before HUD approval of the application, the IHA shall obtain a signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the application. The IHA shall retain copies of the signed agreements in its files for inspection by the HUD office.

(g) The provisions of paragraphs (b) through (f) of this section do not apply where modernization work is limited to correction of development deficiencies, conduct of energy audits, or undertaking of cost-effective energy conservation measures.

(Approved by the Office of Management and Budget under OMB control number 2577-0048)

§ 905.630 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, or undertaking of cost-effective energy conservation measures.

(b) For Turnkey III projects that have purchase price schedules and for Mutual Help projects placed under ACC on or after March 9, 1976:

(1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved application, shall be added to the homebuyer's purchase price as initially determined for Turnkey III or Mutual Help projects.

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule. (For Mutual Help grant funding, no interest rate is used when computing the new purchase price schedule.)

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the provisions of paragraphs (b) (1) and (2) of this section.

(c) For Turnkey III projects that do not have purchase price schedules and Mutual Help projects placed under ACC before March 9, 1976 and not converted:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the

unamortized balance of that portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved application.

(2) The IHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the minimum loan interest rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.

(ii) Multiply this amount by 25, round the result to the next higher number, and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule at the time of settlement.

§ 905.635 Special requirements for section 23 leased housing bond-financed projects.

(a) A section 23 Leased Housing Bond-Financed project is eligible for modernization only if HUD determines that the project has met the following conditions:

(1) The project was financed by the issuance of bonds;

(2) Clear title to the project will be conveyed to or vested in the IHA at the end of the section 23 lease term;

(3) There are no legal obstacles affecting the IHA's use of the property as Indian housing during the 20-year period of the modernization;

(4) After completion of the modernization, the project will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the project; and

(5) The project is covered by a cooperation agreement between the IHA and local governing body during the 20-year period of the modernization.

(b) A section 23 Leased Housing Bond-Financed project that has been

conveyed to the IHA after bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (a) have been satisfied.

§ 905.636 Additional limitations for special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, an IHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program that addresses all of the physical and management improvement needs of the project under a comprehensive modernization program. This limitation does not apply to a project that has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements that are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project.

§ 905.640 Contracting requirements.

(a) *Compliance with State, Tribal and local law and Federal requirements.* The IHA shall comply with State, Tribal and local laws and Federal requirements applicable to bidding and contract awards.

(b) *IHA agreement with architect/engineer.* The IHA shall obtain architectural/engineering services through the competitive proposal process, as described in § 905.175(d). Notwithstanding 24 CFR 85.36(g), the IHA shall comply with HUD requirements either to

(1) Submit the contract for prior HUD approval before execution, or

(2) Certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(c) *Sealed bid (formal advertising) requirements.* For each construction or equipment contract over \$25,000, the PHA shall conduct formal advertising as provided in § 905.175(c), except for procurement under the HUD Consolidated Supply Program, as described in § 905.175(f).

(d) *Assurance of completion.* For each construction or equipment contract over \$25,000, the contractors shall furnish a

performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), subpart B of this part, and as may be required by law, one of the following:

(1) Separate performance and payment bonds, each for 50 percent or more of the contract price;

(2) A 20 percent cash escrow; or

(3) A 25 percent letter of credit.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g) and subpart B of this part, the IHA shall comply with HUD requirements either to

(1) Submit complete construction and bid documents for prior HUD approval before inviting bids, or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The IHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in § 85.36(g)(2) (i) through (iv). In all other instances, the IHA shall make the award without HUD approval after the IHA has certified that:

(1) The bidding procedures and award were conducted in compliance with State, Tribal or local laws and Federal requirements;

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval; and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the IHA shall comply with HUD requirements either to submit the proposed contract changes for prior HUD approval or to certify that the proposed work is within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(h) *Construction requirements.* The IHA shall submit to the HUD office periodic progress reports and shall submit all contract settlement documents for prior HUD approval.

(i) *Management improvement contracts.* The IHA shall obtain consultant services through the

competitive proposal process, as described in § 905.175(d). The IHA shall comply with HUD requirements either to

(1) Submit contracts for management improvements, as well as contract changes, for prior HUD approval; or

(2) Certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget (OMB) under control number 2577-0015; the requirements in paragraph (d) were approved under 2577-0130; the requirements in paragraphs (e) through (h) were approved under control number 2577-0039; and the requirements in paragraph (i) were approved under control number 2577-0049)

§ 905.645 Fund requisitions.

To request modernization funds against the total approved modernization budget, the IHA shall submit a request to the HUD office in accordance with HUD requirements.

(Approved by the Office of Management and Budget under control number 2577-0104)

§ 905.650 Progress reporting.

For each quarter until completion of the modernization program, the IHA shall submit, in a form prescribed by HUD, to the HUD field office:

(a) A report on modernization fund expenditures; and

(b) A narrative report on management improvement progress, where applicable.

(Information collection requirements were approved by the Office of Management and Budget under control number 2577-0049)

§ 905.655 Budget revisions.

The IHA shall not incur any modernization cost in excess of the total approved budget. The IHA shall submit a revision of the budget, in a form prescribed by HUD, if the IHA plans (within the total approved modernization budget) to incur modernization costs in excess of the approved budget amount for any project. The IHA also shall comply with HUD requirements either to (a) submit the proposed budget revision for prior HUD approval if the IHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item; or (b) certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any project being exceeded.

(Approved by the Office of Management and Budget under OMB control number 2577-0044)

§ 905.660 On-site inspections.

The IHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to assure work quality and progress.

§ 905.665 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD field office for review, audit verification, and approval. The IHA shall immediately remit any excess funds provided by HUD. The audit shall follow the requirements of 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, the IHA shall remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under OMB control number 2577-0049)

§ 905.670 Modernization and energy conservation standards.

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and established to provide decent, safe, and sanitary living conditions in IHA-owned and IHA-administered housing, and the HUD energy conservation standards for cost-effective energy conserving improvements in such projects, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are standards which will provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to deferred maintenance, in order to meet the intent of HUD's minimum property standards as they could reasonably be applied to existing housing. In addition, these standards cover improvements relating to site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised,

Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy Conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing projects over the estimated life of the buildings shall apply to projects modernized under this subpart. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2577-0024)

Subpart J—Operating Subsidy

§ 905.701 Purpose and applicability.

(a) *Implementation of section 9(a).* (1) The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of IHA-owned rental housing (operating subsidy).

(2) This subpart establishes standards for the cost of providing comparable services as determined in accordance with a formula representing the operations of a prototype well-managed project, taking into account the character and location of the project and the characteristics of the families served. These standards, policies and procedures are called the Performance Funding System (PFS), as described in this subpart. The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of Federal funds to compensate for excessive costs attributable to poor or inefficient

management. PFS is intended to provide the incentive and financial discipline for excessively high-cost IHAs to improve their management efficiency.

(b) *Applicability.* This subpart is applicable to all IHA-owned rental units under Annual Contributions Contracts, except those in the State of Alaska. This subpart is not applicable to the section 23 Leased Housing Program, the section 23 Housing Assistance Payments Program, the section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. Provisions regarding operating subsidy for the homeownership programs are found in the applicable subpart of this rule (subpart E for Mutual Help and subpart G for Turnkey III). Operating subsidy payments to the IHAs in Alaska for rental units are specified in subpart N.

§ 905.705 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each IHA is eligible shall be determined as follows: The projected operating income level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per-unit per-month dollar amounts, and must be multiplied by the Unit Months Available. Transition funding, if applicable, and other costs as specified in § 905.720(b)-(d) are then added to this total in order to determine the total amount of operating subsidy for the requested budget year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, an IHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the independent audit to be prorated to operations of the IHA-owned rental housing (under § 905.720(a)). See § 905.730 regarding adjustments.

§ 905.710 Computation of allowable expense level.

The IHA shall compute its Allowable Expense Level (AEL) using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes payments in lieu of taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the approved operating budget for the base year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the IHA's

operating budget for the base year approved by HUD except the following:

- (1) Utilities expense;
- (2) Cost of an independent audit;
- (3) Adjustments applicable to budget years before the base year;
- (4) Expenditures supported by supplemental subsidy payments applicable to budget years before the base year;
- (5) All other expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures that were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the IHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some later fiscal year of the PFS, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the IHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The IHA shall compute its Formula Expense Level in accordance with a HUD prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as the average number of bedrooms per unit, the average age of buildings, the average height of buildings, and the relative regional operating cost. It uses weights and a local inflation factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula, the formula itself, and the "range" are subject to updating by HUD annually or at any other time. This updating will be accomplished by publication in the *Federal Register* or by notification given directly to IHAs, whichever is considered appropriate.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level, using the term "range" to mean the spread from \$10.31 below the base year Formula Expense Level to \$10.31 above it—subject to updating of the dollar amount, as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed top limit of Range.* Every IHA whose Base Year Expense Level is below the top limit of the range shall compute its AEL for the first budget year under PFS by adding

the following to its Base Year Expense Level (before adjustment under § 905.730 (a) or (b)):

- (i) Any increase approved by HUD in accordance with § 905.730;
- (ii) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level for the first budget year under PFS; and
- (iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the local inflation factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level is above the top of the Range.* Every IHA whose Base Year Expense Level is above the top of the range shall compute its AEL for the first budget year under PFS by adding the following to its top limit of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

- (i) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level for the first budget year under PFS;
- (ii) The sum of the figure equal to the top limit of its range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the local inflation factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided above, the IHA may be eligible for transition funding under § 905.735.

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new IHA or a new project of an existing IHA that the IHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the base year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project". The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Field Office. The IHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1986.* For each budget year after the first budget year under PFS that begin on or after April 1, 1986, the AEL shall be computed as follows:

- (i) The allowable expense level shall be increased by any increase to the AEL approved by HUD under § 905.720(c);
- (ii) The AEL for the current budget year also shall be increased (or decreased) by either;

(A) If the IHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(4)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the current budget year and the Formula Expense Level for the requested budget year. The IHA characteristics that shall be used to compute the Formula Expense Level for the current budget year shall be the same as those that were used for the requested budget year when the last adjustment to the AEL was made based on this paragraph (d)(4)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(4)(ii)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(4)(i) and (ii) of this section shall be multiplied by the local inflation factor.

Example:

FY 1987. Assume that: (1) The IHA has experienced no change in the number of its units, (2) the AEL for the IHA's FY 1986 is \$64.00, and (3) the applicable local inflation factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is \$68.18, computed as follows:

1. Allowable Expense Level for FY 1986.....	\$64.00
2. Delta: Increase (or Decrease) in Formula Expense Level (\$64.00 × .5 percent).....	.32
3. Sum (line 1 plus line 2).....	64.32
4. Local Inflation Factor.....	1.06
5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4).....	68.18

FY 1988. Assume that the IHA has deprogramed (e.g., demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (d)(4)(ii)(B) was in its FY 1985, at which time the IHA had the following characteristics for its requested budget year: average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The Formula Expense Level for the current budget year is calculated using 12 years (10 years plus two years in which the standard .5 percent adjustment was used), 5 stories and 4 bedrooms.

Also assume that Formula Expense Level calculated based on these characteristics is \$70.00 and that the IHA average characteristics for the requested budget year are now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a Formula Expense Level for the requested budget year of \$68.00. The Formula Expense Level for the requested budget year, therefore, decreases by \$2.00. Assuming that the local inflation factor is 4.5 percent (expressed as 1.045), the AEL for FY 1988 is \$69.16, computed as follows:

1. Allowable Expense Level for FY 1987.....	\$68.18
2. Delta (or Decrease) in Formula Expense Level.....	(2.00)
3. Sum (line 1 plus line 2).....	66.18
4. Local Inflation Factor.....	1.045
5. Allowable Expense Level for FY 1988 (line 3 multiplied by line 4).....	69.16

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant and local inflation factor for the requested budget year applied first to the IHA characteristics for the current budget year and then to the IHA characteristics for the requested budget year, to determine the respective Formula Expense Levels. The local inflation factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

(5) **Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.** HUD may adjust the AEL of budget years after the first year under PFS under the provisions of § 905.710(b) or § 905.720(c).

§ 905.715 Computation of utilities expense level.

(a) **General.** In recognition of the rapid rises which occur in utilities costs, the wide diversity among IHAs as to types of utilities services used and the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's allowable expense level and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's utilities expense level for the requested budget year shall be computed by multiplying the allowable utilities consumption level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section. The AUCL

for space heating utilities will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

(b) **Utilities rates.** The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that, when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(c) **Computation of Utilities Consumption Level.** The AUCL used to compute the utilities expense level of an IHA for the requested budget year will be based upon the availability of consumption data. For project utilities where consumption data is available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. For project utilities (other than new projects) where the consumption data is not available for the entire rolling base period, the computation will be in accordance with paragraph (c)(2) of this section. For new projects, the computation will be in accordance with paragraph (c)(3) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using paragraphs (c) (1), (2), and (3) of this section, as appropriate.

(1) **Rolling Base Period System.** For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (i.e., the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) **IHA fiscal years affected.** The rolling base period shall be used to compute the AUCL submitted with the operating budgets.

(ii) An example of a rolling base is as follows:

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-83	12-31-83 (1st year).....	1-1-79	12-31-81

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-84	12-31-84 (2nd Year)	1-1-80	12-31-82

(2) Alternative method where data is not available for the entire rolling base period:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

(ii) In those cases where an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit per-month utility expenses stated in paragraph (e) of this section shall be used as the utilities expense level and no change factor shall be applied.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.*

(i) A new project, for the purpose of establishing the rolling base period and

the utilities expense level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year, or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another; interruptible service; deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities; or a switch from IHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(d) *Adjustment to utilities used for space heating.* For project utilities with consumption data for the entire rolling base period, and for new projects, consumption of utilities used for space heating shall be adjusted, after the end of the affected year, using a change factor as follows:

(1) *Adjustment of the rolling base period data—(i) Use of Change Factors.* A change factor will be developed each year by HUD that indicates the relationship of the affected IHA fiscal year Heating Degree Days (HDD) to the average HDD of the rolling base period. This change factor is to be used to establish an AUCL for utilities used for space heating which reflects the severity of the winter weather of the affected IHA fiscal year. The change factors are developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by IHA fiscal year. Change factors will be supplied by HUD to the IHAs. When a change factor is greater than 1.000, it means that the HDD of the affected fiscal year were greater than the average annual HDD of the rolling base period.

Example: An example of the effect of the change factor on the rolling base period consumption is:

Assume:

Affected fiscal year HDD—5,250
Rolling Base Period average HDD—5,000
Rolling Base Period average annual consumption for heating purposes—1,000 gallons

Results:

Change Factor is (5,250 divided by 5,000)=1.050
Adjusted Rolling Base Period average consumption for heating purposes (1,000 × 1.050)=1,050 gallons

(ii) *Application of Change Factor to Consumption of the Rolling Base Period.*

The change factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat for dwelling units and other IHA associated buildings. The change factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat; e.g., water and sewer or electricity used solely for non-heating purposes. The change factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal used for heating even though the same meter or same energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter or oil used for space heating and also heating of water. Such consumption for each fiscal year of the rolling base period shall be adjusted by the change factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating (not adjusted by the change factor) shall be included in the total consumption.

EXAMPLE SHOWING APPLICATION OF CHANGE FACTOR

	Base years		
	1st year	2nd year	3rd year
Gas meters used for heating:			
No. 1234 (in therms).....	15,000	18,000	17,000
No. 2345.....	10,000	12,000	11,000
Subtotal.....	25,000	30,000	28,000
Change factor (from HUD)...	x1.050	x1.050	x1.050
Subtotal.....	26,250	31,500	29,400
Gas meters not used for heating:			
No. 3456.....	2,500	2,600	2,650
Total adjusted allowable gas consumption level	28,750	34,100	32,050

IHAs will be required to use change factors of less than 1.000. Change factors are listed by county. If an IHA manages units in more than one county and those counties have different change factors, the above calculation shall be done considering the units in each county and each county's assigned change factor. If an IHA manages units in an independent city not within the jurisdiction of a county, it shall:

(A) If within one county, use that county's change factor; or

(B) If the city abuts more than one county, use the average of the change factors of the contiguous counties.

(2) *Adjusted Consumption for New Projects.*

(i) *Use of Change Factor.* For new projects, the IHA shall apply the change factor to the HUD approved consumption level of utilities used for heating.

(ii) *Application of Change Factor to Consumption of New Projects.* The annual AUCL for new projects shall be adjusted by applying the change factor to the estimated consumption where the utility is used for heating in part or in total. This consumption shall be from a comparable project during the permissible rolling base period. Any other consumption of this utility which is not used for heating shall not be adjusted by the change factor, but the estimated annual consumption based upon data from a comparable project during the permissible rolling base period shall be added to the adjusted consumption.

(e) *Utilities Expense Level Where Consumption Data for the Full Rolling Base Period is Unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD-52599 (Office of Management and Budget approval number 2577-0067), prepared for the IHA fiscal year which ended 12 months before the beginning of the IHA requested budget year (e.g., for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal year ended December 31, 1981). No change factor shall be applied to actual per-unit per-month utility expenses, and subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(f) *Adjustments.* IHAs shall provide information for adjustments of utilities expense levels in accordance with § 905.730(c), which requires an adjustment based upon a comparison of actual experience to the estimated level. The estimated level will have been adjusted in accordance with paragraph (d) of this section.

(The information collection requirements contained in paragraph (a) and in paragraph

(c)(2)(i) were approved by the Office of Management and Budget under OMB control number 2577-0029.)

§ 905.720 *Other Costs.*

(a) *Costs of Independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has been funded by subsidy in a prior year or the subsidy would create residual receipts after provision for the operating reserve. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) An IHA that is required by the Single Audit Act (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and its operating budget, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the allowable expense level, but it is allowed in full in computing the amount of operating subsidy under § 905.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) *Costs Attributable to Units Approved for Deprogramming and Vacant.* Units approved for deprogramming are those for which the IHA's formal request has been approved by HUD but for which deprogramming has not been completed. Costs for these units may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for IHA related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by the IHA and supporting documentation regarding direct costs attributable to such units shall be included as part of the operating budget in which the IHA requests operating subsidy for these units. If the IHA requires assistance in

this matter, the HUD Field Office should be contacted.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the allowable expense level and utilities expense level, and upon a determination that sufficient other funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the IHA may apply for or may receive an increase in operating subsidy.

(d) *Costs beyond the control of the IHA.* Costs attributable to unique circumstances that are beyond the control of the IHA and were not reflected in the IHA's Base Year Expense Level may be considered for supplemental operating subsidy funding. Where costs were reflected in the IHA's Base Year Expense Level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The IHA must submit to the HUD Field Office complete documentation relating to those cost items which it claims to be beyond its control. Such documentation shall not be submitted as part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The IHA also must show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under §§ 990.705 and 905.720 of these regulations, HUD may, in HUD's sole discretion, solicit, evaluate and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the IHA.

(Approved by the Office of Management and Budget under OMB control number 2577-0029)

§ 905.725 *Projected operating income level.*

(a) *Policy.* PFS determines the amount of operating subsidy for a particular IHA based in part upon a projection of the actual dwelling rental income and other income for the particular IHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the IHA, and projecting this amount for the requested budget year by

applying an upward trend factor (subject to updating) of 3 percent, and multiplying this amount by the projected occupancy percentage for the requested budget year. Nondwelling income is projected by the IHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the IHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all project units, as shown on the rent roll control and analysis of dwelling rent charges, which the IHA is required to maintain, for the first day of the month which is six months before the first day of the requested budget year, except that if a change in the total of the rent rolls has occurred in a subsequent month which is before the beginning of the requested budget year and before the submission of the requested budget year operating budget, the IHA shall use the latest changed rent roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the requested budget year.

(3) *Projected occupancy percentage.* The IHA shall determine its projected percentage of occupancy for all project units (projected occupancy percentage) as follows:

(i) *High occupancy IHAs.* If the IHA's actual occupancy percentage (see § 905.760) is equal to or greater than 97 percent, the IHA's projected occupancy percentage is 97 percent.

(ii) *High occupancy IHAs exclusive of scheduled modernization.* If the IHA's actual occupancy percentage (see § 905.760) is less than 97 percent solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, the IHA's projected occupancy percentage is its actual occupancy percentage. An IHA may also use its actual occupancy percentage as its projected occupancy percentage if the IHA has five or fewer vacant units other than vacant, on-

schedule modernization units described in paragraph (b)(3)(v) of this section.

(iii) *Low occupancy IHAs with an approved Comprehensive Occupancy Plan (COP).* If the IHA has an actual occupancy percentage (see § 905.760) less than 97 percent and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section and if the IHA has a HUD-approved COP, the IHA's projected occupancy percentage is determined under § 905.770(h).

(iv) *Low occupancy IHAs without an approved COP.* (A) The IHA shall use 97 percent as its projected occupancy percentage, if the IHA: (1) Has an actual occupancy percentage (see § 905.760) less than 97 percent and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; and the IHA:

(2) (i) Has completed the term of its approved COP but has not achieved a 97 percent actual occupancy percentage or has not had five or fewer vacant units, other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, or

(ii) Is authorized to submit a COP but elects not to submit one, or

(iii) Submits a COP that is disapproved by HUD.

(B) Notwithstanding the requirement in paragraph (b)(3)(iv) (A) that 97 percent be the projected occupancy percentage, a low occupancy IHA which satisfies all the conditions described in paragraph (b)(3)(iv)(A)(2)(i) above, may adjust the 97 percent projected occupancy percentage to discount units that are vacant for reasons beyond its control, as provided in § 905.770(i).

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the comprehensive improvement assistance program (Subpart I) or other sources; and for which

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The IHA has a schedule for carrying out the modernization which is acceptable to HUD; and

(C) The modernization work is on schedule.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the

projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new projects.* The projected average monthly dwelling rental charge for new projects that were not available for occupancy during the budget year before the requested budget year and which will reach the end of the initial operating period (EIOP) within the first nine months of the requested budget year, shall be calculated as follows:

(1) If the IHA has another project or projects under management which are comparable in terms of elderly and nonelderly tenant composition, the IHA shall use the projected average monthly dwelling rental charge for such project or projects.

(2) If the IHA has no other projects which are comparable in terms of elderly and nonelderly tenant composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such project or projects, based on comparable projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken after the effective date of these regulations, which affects rent paid by tenants of projects, each IHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income which it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect the IHA's estimate of change or, in the absence of this submission, to reflect HUD's estimate of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the IHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *IHA's estimate of income other than dwelling rental income—* (1) *Investment income.* IHAs with an estimated average cash balance of less than \$20,000 shall make a reasonable estimate of investment income for the requested budget year. IHAs with an estimated average cash balance of \$20,000 or more shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's requested budget year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of \$10,000, plus \$10 per unit for each unit over 1,000, subject to a

total maximum deduction of \$250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. (See § 905.730(b).)

(2) *Other Income.* All IHAs shall estimate other income based on past experience and a reasonable projection for the requested budget year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and other income, as approved, shall be divided by the number of unit months available to obtain a per-unit per-month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the projected operating income level.

(f) *Required adjustments to estimates.* The IHA shall submit year-end adjustments of projected operating income levels in accordance with § 905.730(b), which covers investment income.

(Information collection requirements contained in paragraphs (e) and (f) of this section have been approved by the Office of Management and Budget under control number 2577-0029)

§ 905.730 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised operating budget.

(a) *Adjustment of Base Year Expense Level—(1) Eligibility.* An IHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing IHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only where the IHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 905.710(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per-unit per-month amount by which the top of the range exceeds the Base Year Expense Level or \$10.31.

(2) *Procedure.* An IHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request

shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* An IHA that has an estimated average cash balance of at least \$20,000 must submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the IHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a target investment income amount based on the actual average yield on 91-day Treasury bills for the IHA's fiscal year being adjusted and the actual average cash balance available for investment during the IHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the IHA with the actual average yield on 91-day Treasury bills for the IHA's fiscal year. Failure of an IHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* An IHA receiving operating subsidy under § 908.705, excluding those IHAs that receive operating subsidy solely for IPA audit (§ 905.720(a)), must submit a year-end adjustment regarding the utility expense level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the IHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Field Office by a deadline established by HUD, which will be during the IHA fiscal year following the IHA fiscal year for which an operating subsidy was received by the IHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the utilities expense level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the IHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan

is necessary as noted in paragraph (d) of this section.

(1) A decrease in utilities expense level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments.

(2) An increase in utilities expense level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(3) Fifty percent of any decrease in utilities expense level attributable to decreased consumption will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(4) An increase in utilities expense level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available; if not available and if the increase would result in a reduction of the operating reserve below the authorized maximum, 50 percent of the amount of the reduction below such maximum will be funded by increased operating subsidy payments subject to the availability of funds, if such excess utility consumption was attributable to causes that were beyond the control of the IHA.

(5) In emergency cases, where an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the IHA's current budget year. Unlike the adjustments mentioned in paragraphs (c)(1) through (c)(4) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated utility expense level for the fiscal year to be adjusted.

(6) Supporting documentation substantiating the requested adjustments shall be retained by the IHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* An IHA may request an adjustment to projected average monthly dwelling rental income under PFS if the IHA can establish to HUD's satisfaction that the projected amount computed under § 905.725 was not attained because of circumstances beyond the control of the IHA, such as a substantial increase in general unemployment in the locality, or

because of a revision of the IHA's rent schedule which has been approved by HUD. The IHA must also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustments to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the IHA's fiscal year being adjusted. In emergency cases, however, where an IHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the IHA's operating subsidy as result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the IHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the IHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Information collection requirements contained in paragraphs (a)-(c) of this section have been approved by the Office of Management and Budget under control number 2577-0029)

§ 905.735 Transition funding for excessive high-cost IHAs.

If an IHA's Base Year Expense Level exceeds its allowable expense level, computed as provided in § 905.710, for any budget year under PFS, the IHA may be eligible for transition funding. Transition funding shall be an amount not to exceed the difference between the Base Year Expense Level and the allowable expense level for the requested budget year, multiplied by the number of unit months available. HUD shall have the right to discontinue payment of all or part of the transition funding in the event HUD at any time determines that the IHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 905.740 Operating reserves.

(a) *Use of operating reserves.* HUD will not approve an operating budget or budget or operating budget revision which proposes to use operating reserve funds that would cause the reserve balance to fall below 40 percent of the maximum operating reserve for the requested budget year, unless the IHA fully documents that such decreased reserve level will be sufficient to meet the working capital needs of the IHA. If operating reserves are used in excess of the amount approved by HUD in the operating budget, HUD is not obligated to provide additional operating subsidy to restore such funds.

(b) *Augmentation of the operating reserve.* The PFS does not specifically provide operating subsidy to augment the IHA's operating reserve. However, the full amount of the IHA's operating subsidy eligibility may be provided to the IHA, and some part or all of this amount may be used to augment the operating reserve as long as the estimated year-end reserve balance, as shown in the approved operating budget for the year for which the funds are requested, does not exceed the maximum operating reserve amount as shown in the same operating budget.

§ 905.745 Operating budget submission and approval.

(a) *Required board resolution.* In addition to other budget documentation required by HUD, each operating budget or budget revision submitted to HUD in accordance with the provisions of PFS shall include a certified copy of a resolution of the board of commissioners stating that the board has reviewed and approved the operating budget or operating budget revision and has found:

(1) That the proposed expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving lower income families.

(2) That the financial plan is reasonable in that:

(i) It indicates a source of funding adequate to cover all proposed expenditures.

(ii) It does not provide for use of Federal funding in excess of that payable under the provisions of these regulations.

(3) That all proposed rental charges and expenditures will be consistent with provisions of law and the annual contributions contract.

(b) *HUD limited operating budget review.* Detailed HUD review of the operating budgets or operating budget revisions normally will be limited to the prescribed PFS forms. Under this

procedure, although the operating budget normally will not be reviewed in depth, the operating reserve calculation in all cases will be examined and budget modifications will be made where the operating reserve provisions are not in accordance with HUD requirements. In addition, if the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors or errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office shall modify or disapprove the operating budget. The HUD Field Office may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(c) *Withdrawal by HUD of limited operating budget review.* HUD reserves the right at any time to deviate from the limited operating budget review provided in paragraph (b) of this section if HUD finds that the IHA is operating its program in a manner which threatens the future serviceability, efficiency, economy, or stability of the housing that it operates. If such action is deemed necessary, the HUD Field Office will normally notify the IHA before its submission of the operating budget that HUD will subject the operating budget to a detailed review. When the IHA's operation no longer threatens the future serviceability, efficiency, economy or stability of the housing, HUD will notify the IHA that the limited review as provided in paragraph (b) of this section is being reinstated.

(Approved by the Office of Management and Budget under OMB control number 2577-0026.)

§ 905.750 Payment procedure for operating subsidy under PFS.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the IHA and approved by HUD, reflecting the IHA's projected cash needs. The schedule may provide for several payments per month. If an IHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of an IHA's budget year under these PFS regulations, annual or monthly or quarterly payments of operating subsidy shall be made, as

provided in paragraph (a) of this section, based upon the amount of the IHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to IHAs.

§ 905.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually (see subpart D). IHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *IHAs in compliance with requirements.* Each submission of the original operating budget for a fiscal year shall be accompanied by a certification by the IHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with subpart D of this part.

(c) *IHAs not in compliance with requirements.* Any IHA not in compliance with the annual income reexamination requirement at the time of operating budget submission shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the operating budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the IHA is not substantially in compliance with the annual income reexamination requirement, HUD shall withhold payments to which the IHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the IHA resulting from its failure to comply with those requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577-0026)

§ 905.760 Determining Actual Occupancy Percentage.

For each requested budget year beginning on or after July 1, 1986, the IHA shall determine the percentage of occupancy for all project units included in the unit months available (actual occupancy percentage), at its option,

either for the last day of the month that ends six months before the beginning of the requested budget year, or based on the average occupancy during the month ending six months before the beginning of the requested budget year. If the IHA elects to use an average, it shall maintain a record of its computation of its actual occupancy percentage. The actual occupancy percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition or disposition in order to reflect the expected average occupancy rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition, or disposition not reflected in the adjustment, the IHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

§ 905.770 Comprehensive occupancy plan requirements.

(a) *IHAs that may submit a Comprehensive Occupancy Plan.* An IHA may prepare and submit a COP to HUD in accordance with the provisions of this section:

(1) For its first requested budget year beginning on or after July 1, 1986, if the IHA has an actual occupancy percentage (§ 905.760) less than 97 percent, and has more than five vacant units, not solely because of vacant, on-schedule modernization units (as defined in § 905.725(b)(3)(v)); or

(2) For a requested budget year beginning on or after July 1, 1987, if:

(i) The IHA projects an actual occupancy percentage (§ 905.760) for the requested budget year of less than 97 percent and has more than five vacant units, other than vacant, on-schedule modernization units;

(ii) The IHA is not currently a low occupancy IHA, that is, the IHA had an actual occupancy percentage determined under § 905.760 for the current requested budget year that equalled or exceeded 97 percent or had five or fewer vacant units other than vacant, on-schedule modernization units; and

(iii) The IHA is not currently under a COP.

(b) *Comprehensive Occupancy Plan content.* A COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(1) The general IHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the IHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The project-specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97 percent.

(ii) State the project-specific actions the IHA is taking or intends to take to eliminate vacancies, such as (A) modernization, (B) demolition, (C) disposition, (D) change in occupancy policy, or (E) physical or management improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The COP shall also include yearly IHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97 percent stated for each year until there is a projected IHA-wide occupancy rate of at least 97 percent or an estimate that the IHA will have five or fewer vacant units, excluding units that are vacant, on-schedule modernization units. These goals should reflect the average occupancy percentage for each year. The yearly occupancy goals (both IHA-wide and project specific) for the first year of a COP that is submitted with an IHA's budget for its first requested budget year beginning on or after July 1, 1986, shall take into account actions taken by the IHA from August 2, 1985, to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan.* An IHA that submits a COP to HUD for approval in accordance with paragraph (a) of this section shall submit the COP with its budget.

(d) *Maximum term of a Comprehensive Occupancy Plan.* (1) Except as provided in paragraph (d)(2) of this section, a COP:

(i) Submitted for an IHA's first requested budget year beginning on or after July 1, 1986, shall be for a period approved by HUD as reasonable, which shall not exceed five years; or

(ii) submitted for a requested budget year beginning on or after July 1, 1987, shall be for a period of one or two years, as approved by HUD.

(2) A COP that exceeds the maximum period provided in paragraphs (d)(1) (i)

or (ii) of this section may be approved only if the Assistant Secretary for Public and Indian Housing has given written authorization for such longer period before the approval of the COP.

(e) *Local governing body review.* The IHA shall have the COP reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the COP.

(f) *HUD review of Comprehensive Occupancy Plan.* If HUD fails to approve, disapprove or otherwise substantively comment on a COP within 45 days of receipt of the plan, the IHA-wide yearly occupancy goal for the first year of the COP shall be considered approved for the purpose of determining the IHA's projected occupancy percentage under paragraph (h) of this section.

(g) *Financially Troubled IHA.* If an IHA is a financially troubled IHA and has an approved workout plan, the COP shall be made an addendum to the workout plan.

(h) *Projected Occupancy Percentage (Comprehensive Occupancy Plan).* An IHA that has a HUD-approved COP shall use as its projected occupancy percentage for computing its projected operating income level under § 905.725 the greater of (1) its actual occupancy percentage, as determined under § 905.760 or (2) its approved, yearly IHA-wide occupancy goal, adjusted, as necessary, to discount units that are vacant for reasons beyond the IHA's control, as provided in paragraph (i) of this section.

(i) *Units vacant for reasons beyond an IHA's control.* A vacant unit is considered vacant for reasons beyond an IHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The IHA has applied for modernization, HUD cannot fund the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on-schedule modernization units.

(3) The units are vacant because of natural disasters, or as a result of a court-ordered, or HUD-approved, constraints relating to title VI of the Civil Rights Act of 1964, or as a result of litigation that precludes units from being occupied.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577-0066.)

Subpart K—Energy Audits, Energy Conservation Measures and Utility Allowances

§ 905.801 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement HUD policies in support of national energy conservation goals by reducing energy consumption, with consequent reduction of operating costs of IHA-owned housing projects, by requiring that IHAs conduct energy audits and undertake certain cost-effective, energy conservation measures. Energy audits will determine what energy conservation measures will be cost-effective and will establish priorities for funding those measures found to be cost-effective. This subpart also provides for the establishment of utility allowances for tenants based on reasonable consumption of utilities by an energy-conscious household.

(b) *Applicability.* The provisions of this subpart apply to all IHAs with IHA-owned housing including Mutual Help and Turnkey III.

§ 905.805–§ 905.880 [Reserved]

§ 905.885 Utility Allowances.

(a) *Applicability.* (1) This section applies to all Indian housing dwelling units, including those operated under the Mutual Help Homeownership Program.

(2) In rental units where utilities are furnished by the IHA but there are no checkmeters to measure the actual utilities consumption of the individual units, tenants shall be subject to charges for consumption of tenant-owned major appliances, or for optional functions of IHA-furnished equipment, in accordance with paragraph (e) of this section, but no utility allowance will be established.

(b) *Establishment of utility allowances by IHAs.* (1) IHAs shall establish allowances for IHA-furnished utilities for all checkmeters utilities and allowances for tenant-purchased utilities for all utilities purchased directly by tenants from the utilities suppliers.

(2) The IHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by tenants.

(3) The IHA shall give notice to all tenants of proposed allowances and scheduled surcharges and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis

for determination of the allowances, scheduled surcharges or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify tenants of the place where the IHA's record maintained in accordance with paragraph (b)(2) of this section is available for inspection; and shall provide all tenants an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the IHA and shall be available for inspection by tenants and, upon request, by HUD.

(4) The IHA shall furnish to HUD, as instructed, a copy of its schedule of allowances and scheduled surcharges, and each revision thereof, promptly upon such schedule becoming effective. Schedules of allowances and scheduled surcharges shall not ordinarily be subject to approval by HUD before becoming effective but will be reviewed in the course of audits or reviews of IHA operations. Following such audits or reviews, HUD may require additional data concerning the IHA's basis for determination of allowances or scheduled surcharges, may require additional or different relevant data to be considered by the IHA in its next annual review on an exception basis, may require that an IHA submit its proposed revision of allowances or scheduled surcharges to HUD for review and approval before such revision being proposed is adopted.

(5) Except where a different standard of review is applicable in review procedures governed by applicable State law, the IHA's determinations of allowances, scheduled surcharges and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577-0062)

(c) *Categories for establishment of allowances.* Separate allowances shall be established for each utility and for each category of dwelling units determined by the IHA to be reasonably comparable as to factors affecting utility usage. The IHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the IHA.

(d) *Period for which allowances are established*—(1) *IHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, tenants may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(2) *Tenant-purchased utilities.* Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer tenants a uniform payment plan, the allowances established may provide for seasonal variations.

(e) *Standards for allowances for utilities.* (1) The objective of an IHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. Stated another way, it should be an objective of the allowance that excess consumption which may result in a surcharge (or absorption of utility cost in excess of the allowance) should be an amount of consumption that is reasonably within the control of a tenant household to avoid.

(2) Allowances for both IHA-furnished and tenant-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the IHA for all tenants (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the IHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by tenants.

(3) The complexity and elaborateness of the methods chosen by the IHA, in its discretion, to achieve the foregoing objective will be dependent upon the data available to the IHA and the extent of the administrative resources reasonably available to the IHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances. Recommended sources of data for determining reasonable consumption levels include:

(i) Consumption information from the IHA's records or obtained through current reading of checkmeters.

(ii) Consumption data on residential use of utilities obtained from utility suppliers or other sources.

(iii) Engineering calculations based on technical data concerning energy

requirements of appliances and equipment and of projects and units having particular characteristics.

(iv) Data concerning energy requirements available from governmental and other sources.

(v) Data obtained from energy audits.

(4) In establishing allowances, the IHA shall take into account relevant factors affecting consumption requirements, including:

(i) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking or heating domestic water or space heating or any combination of the three.

(ii) The climatic location of the housing projects.

(iii) The size of the dwelling units and the number of occupants per dwelling unit.

(iv) Type of construction and design of the housing project.

(v) The energy efficiency of IHA-supplied appliances and equipment.

(vi) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total tenant payment.

(vii) The physical condition, including insulation and weatherization, of the housing project.

(viii) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(ix) Temperature of domestic hot water.

(f) *Surcharges for excess consumption of IHA-furnished utilities.* (1) For dwelling units subject to allowances for IHA-furnished utilities where checkmeters have been installed, the IHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the IHA's average utility rate. The basis for calculating such surcharges shall be described in the IHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the IHA's average utility rate shall not be subject to the advance notice requirements of this section.

(2) For dwelling units served by IHA-furnished utilities where checkmeters have not been installed, the IHA shall establish schedules of surcharges indicating additional dollar amounts tenants will be required to pay by reason of estimated utility consumption

attributable to tenant-owned major appliances or to optional functions, such as air conditioning, of IHA-furnished equipment. Such surcharge schedules shall state the tenant-owned equipment (or functions of IHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the IHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

(g) *Review and revision of allowances*—(1) *Annual review.* The IHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in paragraph (e), shall establish revised allowances. The review shall include all changes in circumstances (including completion of comprehensive or special purpose modernization under the Comprehensive Improvement Assistance Program and/or other energy conservation measures implemented by the IHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(2) *Revision as a result of rate changes.* The IHA may revise its allowances for tenant-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to tenant payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577-0062)

(h) *Individual relief.* Requests for relief from surcharges for excess consumption of IHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for tenant-purchased utilities, may be granted by the IHA on reasonable grounds, such as special needs of elderly, ill or handicapped tenants, or special factors affecting utility usage not within the control of the tenant, as the IHA shall deem appropriate. The IHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the IHA

adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the IHA representative with whom initial contact may be made by tenants), and the IHA's criteria for granting such relief, shall be included in each notice to tenants given in accordance with paragraph (b)(3) of this section and in the information given to new tenants upon admission.

Subpart L—Operation of Projects After Expiration of Initial ACC Term

§ 905.901 Purpose and applicability.

(a) *Purpose.* This subpart specifies methods for extending the effective period of provisions of the ACC relating to project operation beyond the original ACC term. Such an extension provides a contractual basis for continued eligibility for operating subsidy.

(b) *Applicability.* This subpart applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However, it does not apply to the section 8 and Section 23 Housing Assistance Payments Programs and the section 10(c) and Section 23 Leased Housing Programs.

§ 905.903 Continuing eligibility for operating subsidy; ACC extension.

(a) *Operating subsidy.* After the initial term of the ACC, HUD will pay operating subsidy with respect to a project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation for at least ten years after the last payment of HUD assistance. The ACC amendment shall be in the form prescribed by HUD, and shall specify the particular provisions of the ACC that relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the IHA execute and file, for public record, an appropriate document evidencing the IHA's covenant not to convey, encumber or make any other disposition of the project without HUD approval for a period of ten years after the receipt of the last payment of HUD assistance.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (consolidated ACC), each annual operating subsidy payable under that ACC is a lump-sum amount which is not divided into discrete amounts for the individual projects subject to the consolidated ACC (see subpart J of this chapter). Accordingly, if an IHA, before

submitting a request for operating subsidy, determines that any project(s) under the consolidated ACC will not require operating subsidy and should not be subject to the provisions of paragraph (a) of this section, the IHA shall accompany its request with a resolution certifying that no operating subsidy shall be used with respect to such project(s) thereafter and that all financial records and accounts shall be kept separately for such project(s). In such cases, the removal of the project(s) from the request for operating subsidy shall be reflected by the inclusion of that number of unit months available for the project(s) when making the calculations, under subpart J of this chapter, for determination of total amount of operating subsidy payable under the consolidated ACC. In any event no operating subsidy payable under a consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project which is ineligible or otherwise excluded from operating subsidy under paragraph (a). Even if no operating subsidy is received with respect to a project, the IHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

(Approved by the Office of Management and Budget under control number 2577-0130)

§ 905.905 ACC extension in absence of current operating subsidy.

Where no operating subsidy is being paid under an ACC, the IHA shall, at least one year before the anticipated ACC expiration date for the project, notify HUD as to whether or not the IHA desires to maintain a basis for receiving operating subsidy with respect to the project after the anticipated ACC expiration date. This notification shall be submitted to the appropriate HUD Field Office in the form of a resolution by the IHA's Board of Commissioners. If the IHA does not desire to maintain a basis for operating subsidy payments with respect to the project after the anticipated ACC expiration date, the resolution shall certify that no operating subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the IHA does desire to maintain a basis for such operating subsidy payments, the resolution shall include the IHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon HUD's receipt of the

request, HUD and the IHA shall enter into an ACC amendment effecting the extension for the period requested by the IHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in subpart M.

§ 905.907 HUD approval of disposition or demolition.

During the post-assistance service period of continued operation as lower income housing, HUD may authorize an IHA to dispose of or demolish housing units at any time, in accordance with subpart M.

Subpart M—Disposition or Demolition of Projects

§ 905.921 Purpose and Applicability.

(a) *Purpose.* This subpart sets forth requirements for HUD approval of an IHA's application to dispose of or demolish (in whole or in part) IHA-owned projects assisted under the Act. The rules and procedures contained in 24 CFR part 85 are inapplicable.

(b) *Applicability—(1) Type of projects.* This subpart applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However it does not apply to:

(i) IHA-owned section 8 housing or housing leased under section 10(c) or section 23 of the Act;

(ii) Demolition or disposition before the end of the initial operating period (EIOP), as determined under the ACC, of property acquired incident to the development of an Indian housing project (however, this exception does not apply to units occupied or available for occupancy by Indian housing tenants before EIOP);

(iii) Conveyance of Indian housing for the purpose of providing homeownership opportunities for lower income families under section 21 of the Act, the Turnkey III or Mutual Help Homeownership Opportunity programs, or any other homeownership programs established under section 5(h), 6(c)(4)(D), or title II of the Act.

(iv) Leasing of dwelling or nondwelling space incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(v) Reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes or number of units) without demolition;

(vi) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain; and

(vii) Units approved for deprogramming before February 5, 1988.

(c) *Type of actions.* Any action by an IHA to dispose of or demolish an Indian housing project or a portion of an Indian housing project is subject to the requirements of this subpart. Until such time as HUD approval may be obtained, the IHA shall continue to meet its ACC obligations to maintain and operate the property as housing for lower income families. This does not, however, mean that HUD approval under this subpart is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning, or comprehensive occupancy planning.

§ 905.923 General requirements for HUD approval of disposition or demolition.

(a) For purposes of this subpart, the term "tenant" will also include "homebuyer" where the development involved is a homeownership project, and the term "unit of general government" will include the tribal government, where applicable.

(b) HUD will not approve an application for disposition or demolition unless:

(1) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any IHA-wide tenant organizations that will be affected by the disposition or demolition;

(2) Except where no dwelling units are involved, the application contains a certification by the chief executive officer, or designee, of the unit of general government that the proposed activity is consistent with the applicable housing assistance plan;

(3) If any displacement of tenants is involved, the relocation requirements of § 905.925 are satisfied;

(4) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in the Department's regulations at 24 CFR part 50; and

(5) The IHA has developed a replacement housing plan, in accordance with § 906.935, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (e.g., State or local

programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

§ 905.925 Relocation of Displaced Tenants.

(a) (1) Tenants who are to be displaced as a result of disposition or demolition must be relocated to other decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act), which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, or sex, in compliance with applicable Federal and State laws.

(2) Relocation may be to other publicly assisted housing, including housing assisted under section 8 of the Act and housing available as a result of the section 8 Housing Voucher Program, provided that the IHA ensures that the rent paid by the displaced tenant following relocation will not exceed the amount permitted under section 3(a) of the Act. The IHA shall be responsible for providing assistance to the displaced tenant in this regard and may use vouchers or certificates to ensure that the rent paid by the tenant does not exceed the amount permitted under section 3(a) of the Act. Nothing in this paragraph shall prohibit a displaced tenant from requesting a voucher under the section 8 Housing Voucher Program for use in a housing unit with rent that exceeds the amount permitted under section 3(a) of the Act, if such a unit is chosen by a displaced tenant who has been provided an opportunity to use housing voucher assistance in accordance with this paragraph.

(b) In addition to provision of relocation housing, assistance to all displaced tenants shall include assistance in finding other suitable housing (preferably on the reservation or within the jurisdiction of the IHA), including payment of actual, reasonable moving costs, and counseling and advisory services to assure that full choices and real opportunities exist for tenants displaced from Indian housing scheduled for disposition or demolition to select relocation housing in a full range of neighborhoods in which suitable relocation housing may be found, in and outside areas of minority concentration. Tenants to be displaced become eligible for assistance as of the date of receipt of an official notice to move. Pending the effectiveness of final rules to implement the 1987 amendments

to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, that Act does not apply to displacement as a result of the activities covered by this subpart.

§ 905.927 Specific Criteria for HUD Approval of Disposition Requests.

(a) In addition to other applicable requirements of this subpart, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the IHA, because at least one of the following criteria is met:

(1) Developmental changes in the area surrounding the project (e.g., density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the IHA.

(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. An IHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property.

(3) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the IHA that are not inconsistent with other provisions of the Act. As an example, if the property meets any of the criteria for demolition under § 905.928, it may be disposed of under this criterion (§ 905.927(a)(3)) subject to conditions that HUD may impose (e.g., demolition to follow disposition in order to assure abatement of a threat to safety or health).

(b) In the case of disposition of property other than dwelling units, (1) the property is determined by HUD to be excess to the needs of the project (after the end of the initial operating period), or (2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

§ 905.928 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this subpart, HUD will not approve an application for demolition unless HUD determines that at least one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or a portion of the project, is obsolete as to physical condition, location, or other

factors, making it unusable for housing purposes; and no reasonable program of modifications, in keeping with the provisions of subpart I, is feasible to return the project or portion of the project to useful life. Major problems indicative of obsolescence are—

(1) As to physical condition: structural deficiencies, substantial deterioration, or other design or site problems (e.g., severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with 24 CFR part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use; and

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (e.g., to reduce project density).

§ 905.931 IHA application for HUD approval.

Written approval by HUD shall be required before the IHA may undertake any transaction involving demolition or disposition. To request approval, the IHA shall submit an application to the appropriate HUD office that includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed disposition or demolition under one or more of the applicable criteria of § 905.927 or § 905.928;

(d) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or disposition (see § 905.925). The relocation plan must at least indicate:

(1) The number of tenants to be displaced;

(2) What counseling and advisory services the IHA plans to provide;

(3) What housing resources are expected to be available to provide housing for displaced tenants;

(4) An estimate of the costs for counseling and advisory services and tenant moving expenses, and the expected source for payment of these costs (see § 905.935); and

(5) The minimum official notice that the IHA will give tenants before they are required to move;

(e) A description of the IHA's consultations with tenants and any tenant organizations (as required under § 905.923(b)(1)), with copies of any written comments which may have been submitted to the IHA and the IHA's evaluation of the comments;

(f) A replacement housing plan, as required under § 905.923(b)(5), and a statement by the chief executive officer, or designee, of the government with which the IHA has a cooperation agreement covering that project, indicating approval of the replacement plan;

(g) If required under § 905.923(b)(2), a certification by the chief executive officer, or designee, of the government that the proposed demolition or disposition is consistent with the applicable housing assistance plan;

(h) The estimated balance of project debt, under the ACC, for development and modernization;

(i) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal unless, as determined by HUD, (1) more than one appraisal is warranted, or (2) another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(j) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 905.933;

(k) A copy of a resolution by the IHA's Board of Commissioners approving the application;

(l) If determined to be necessary by HUD, an opinion by the IHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, Tribal and local laws; and

(m) Any additional information necessary to support the application and assist HUD in making determinations under this subpart.

(Approved by the Office of Management and Budget under control number 2577-0075)

§ 905.933 Use of proceeds.

(a) *Disposition.* (1) Where HUD approves the disposition of real property of a project, in whole or in part, the IHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be

in the best interests of the IHA or the Federal government, or for sale for less than fair market value (where permitted by State, Tribal or local law), based on commensurate public benefits to the community, the IHA or the Federal government justifying such an exception. Reasonable costs of disposition, and of relocation of displaced tenants allowable under § 905.925, may be paid by the IHA out of the gross proceeds, as approved by HUD.

(2) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows: First for the retirement of outstanding obligations, if any, issued to finance development or modernization of the project, and thereafter for the provision of housing assistance for lower income families, through such measures as modernization of lower income housing or the acquisition, development or rehabilitation of other properties to operate as lower income housing.

(b) *Demolition.* Where HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under CIAP (subpart I of this part), the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 905.935 Replacement housing plan.

(a) HUD may not approve an application or furnish assistance under this subpart unless the IHA submitting the application for disposition or demolition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each dwelling unit to be disposed of or demolished under the application. The plan must include any one or a combination of the following:

(1) The acquisition or development of additional lower income housing dwelling units;

(2) The use of 15-year project-based assistance under section 8 (as provided for in 24 CFR part 882, subpart G);

(3) The use of not less than 15-year project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section 8(b)(1) of the Act; or

(5) The use of 15-year tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o)), under the conditions described in paragraph (b) of this section.

(b) Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance;

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the section 8 program; size, condition, and rent levels of available rental housing as compared to section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for housing assistance under the Act; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances; and

(3) To justify a finding under paragraph (b)(1) of this section, the IHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to infeasibility of project-based assistance must be based on the standards for feasibility stated in the

respective regulations that govern each type of eligible project-based program identified in paragraph (a) of this section. A finding of infeasibility may thus be made only if the applicable feasibility standards cannot be met under any of those project-based programs, or any combination of them.

(c) The plan must be approved by the unit of general local government (including Tribal government) in which the project is located.

(d) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed disposition or demolition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified to begin plan implementation.

(e) The plan must include a method that ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs.

(f) The plan must prevent the taking of any action to dispose of or demolish any unit until the tenant of the unit is relocated in accordance with § 905.925. This does not preclude actions permitted under § 905.921(b), actions required under this subpart for development and submission of the IHA's application for HUD approval of disposition or demolition, or actions required to carry out a relocation plan that has been approved by HUD in accordance with §§ 905.925 and 905.931(d).

(g) The plan must include an assessment of the suitability of the location of proposed replacement housing based upon application of the site selection criteria established in § 905.230.

(h) The plan must contain assurances that any replacement units acquired, newly constructed or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

§ 905.937 Reports and records.

(a) After HUD approval of disposition or demolition of all or part of a project, the IHA shall keep the appropriate HUD

office informed of significant actions in carrying out the disposition or demolition, including any significant delays or other problems. When disposition or demolition is completed, the IHA shall submit to the HUD office a report confirming the action, certifying compliance with all applicable requirements of Federal law and regulations and, in the case of disposition, accounting for the proceeds and costs of disposition.

(b) The IHA shall be responsible for keeping records of its HUD-approved disposition or demolition sufficient for audit by HUD to determine the IHA's compliance with applicable requirements of Federal law and this subpart.

(Approved by the Office of Management and Budget under OMB control number 2577-0075)

Subpart N—Miscellaneous

§ 905.950 Operating subsidy eligibility projects owned by IHAs in Alaska.

(a) The provisions of this subpart N are applicable to the development, modernization (CIAP), and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the rental housing owned by the IHAs in the State of Alaska.

(b) The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40, and 85.41, except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a) of the United States Housing Act of 1937.

Dated: June 8, 1990.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-13876 Filed 6-15-90; 8:45 am]

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Test Report

**Monday,
June 18, 1990**

Part IV

Department of Housing and Urban Development

**Office of Assistant Secretary for Public
and Indian Housing**

**Fund Availability, Invitation for
Applications: Public Housing
Development/Major Reconstruction of
Obsolete Public Housing, Fiscal Year
1990; Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3090; FR-2765-N-01]

Fund Availability, Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing, Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability; invitation for applications.

SUMMARY: This Notice announces the availability of FY 1990 funding and invites eligible entities to submit, by July 18, 1990, applications for public housing development, or for the Major Reconstruction of Obsolete Public Housing (MROP) program, or for both programs. This Notice also provides instructions regarding the preparation and processing of applications. This Notice is not applicable to the Indian housing program.

FOR FURTHER INFORMATION CONTACT: Thomas Sherman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4204, Washington, DC 20410. Telephone (202) 708-1380. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Fund Availability

The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1990 (FY 1990 Appropriations Act) provides, after adjustment for reductions and sequestration, \$443.1 million of budget authority (grants) for development or acquisition costs of public housing including major reconstruction of obsolete public housing (MROP). The Fiscal Year 1990 grant authority will be used to provide grants to cover the development cost of public housing projects, including major reconstruction of obsolete projects (MROP), under section 5(a)(2) of the United States Housing Act of 1937 (the Act), to eligible public housing agencies (PHAs). The grant contract shall remain in effect for a 40-year period. Budget authority recaptured in FY 1990 from previously reserved projects may not be reused and will be rescinded.

2. Application Invitation

The Department of Housing and Urban Development (HUD) is accepting, and all eligible PHAs are invited to

submit, applications pursuant to 24 CFR 941.301 for grant assistance for the development (construction, rehabilitation or acquisition of existing units) of public housing, and/or applications (see Comprehensive Improvement Assistance Program 24 CFR part 968, with modifications as set out in this Notice) for MROP projects. While this funding round is to be carried out in conformity with the requirements set forth in 24 CFR parts 941 (development), and 968 (MROP), the funding round is also subject to the additional specific requirements set forth in this NOFA. It should be noted that the MROP procedures for FY 1990 differ considerably from procedures contained in prior-year processing notices. Applicants for development funds also should consult Handbook 7417.1 REV-1 and the FY 1990 detailed Notice PIH 90-24 (HUD). MROP applicants should also consult CIAP Handbook 7485.1 REV-4 and detailed Notice PIH 90-4 (PHA).

3. Funding Assignments

a. The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act of 1989) exempts, from fair share allocation and metropolitan/nonmetropolitan distribution requirements, appropriations determined incapable of geographic allocation, including funds to provide replacement housing in connection with demolition/disposition. Within six weeks after the PHA application submission deadline, each Regional Administrator shall submit to Headquarters (Public Housing Project Development Division) a list identifying projects recommended for Fair Share Exempt and Headquarters Reserve funding and fifteen of the highest ranked "other" development and/or MROP projects. Based on the recommendations of HUD's Regional Administrators and actual approvals for demolition/disposition, Headquarters will determine the funding required for the Fair Share-Exempt category, and projects to be funded from the Headquarters Reserve.

(1) *Fair Share Exempt.* Threshold-approvable applications to replace existing public housing approved between February 5, 1988, and July 27, 1990, for demolition/disposition pursuant to section 18 of the Act shall be funded before the fair share allocations are determined.

(2) *Headquarters Reserve.* Threshold-approvable applications relating to litigation settlements involving lack of assisted or minority housing opportunities and replacement housing for units sold to residents for

homeownership, if approved by July 27, 1990 shall be funded from the Headquarters Reserve.

b. The balance of appropriated funds will be allocated to Regional Offices on the basis of fair share factors and metropolitan/nonmetropolitan area requirements which, in accordance with section 213(d) of the Housing and Community Development Act of 1974, reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions.

(1) Given the limited funding available, it would be impracticable to fair share below the Regional level:

Region	Fair-share factors (percentages)
I Boston.....	7
II New York.....	19
II Philadelphia.....	9
IV Atlanta.....	13
V Chicago.....	15
VI Ft. Worth.....	8
VII Kansas City.....	4
VIII Denver.....	2
IX San Francisco.....	19
X Seattle.....	4
TOTAL.....	100

(2) To the extent practicable, Regional Administrators will select applications for funding of other development and MROP projects in proportion to the funding requested in approvable development applications submitted, relative to approvable MROP applications submitted, and on the basis of the criteria stated in this NOFA. (For development projects, funds shall be reserved in an amount equal to the total development cost cap for the number of units being reserved.) Partial (reduced) funding of highly ranked applications is authorized to facilitate the funding of additional highly ranked applications. These additional applications will be funded in rank order, to the extent that funds are sufficient to meet the needs of the additional project or projects. Each Regional Administrator will ensure that reduced funding of an application is authorized only when, based upon the size and nature of the project, it is feasible to reduce the amount requested while continuing to provide for a viable undertaking.

(3) Regional Offices may not authorize any selection criteria in addition to the criteria set out in this Notice.

(4) Any unused Regional fair share funding will be returned to Headquarters and reallocated in accordance with 24 CFR part 791.

4. Application Submission and Deadline

a. To be eligible for funding in FY 1990, development/MROP applications must be submitted under this NOFA, by eligible PHAs which have the required local cooperation and legal authority to develop, own and operate public housing projects, must contain all exhibits and additional information required by 24 CFR 941.302 (for development) or 24 CFR part 968 (for MROP), with modifications as specified in this Notice (see paragraphs 5 through 10 of this NOFA for other development/MROP application requirements) and in the FY 90 detailed Notice PIH 90-24 (HUD), and must be received by the HUD Field Office by close of business (local time) on July 18, 1990.

b. Separate applications shall be submitted by housing type, development method, and community for which the project is proposed. A PHA submitting more than one application should state, in an accompanying letter, its priorities for receiving funding and whether it will accept funding for fewer units than requested.

c. Each application must be accompanied by a PHA Resolution in Support of Public Housing Project, Form HUD-52471. The assurances that the PHA provides under this Resolution, wherein the PHA agrees to comply with all requirements of 24 CFR part 941 (e.g., the requirements of nondiscrimination under the civil rights laws (24 CFR 941.208)), shall constitute assurance that the PHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973.

d. In accordance with 24 CFR 24.630, the PHA must submit its Certification for a Drug-Free Workplace, contained in its completed Form HUD-50070.

e. Section 319 of the Fiscal Year 1990 Department of the Interior and Related Agencies Appropriations Act (the "Byrd Amendment") (31 U.S.C. 1352) prohibits use of appropriated funds for "influencing or attempting to influence" Federal officials in connection with grant awards of \$100,000 or more. In addition, in accordance with 24 CFR part 87:

(1) The PHA must submit with each application a certification that no Federal funds have been or will be used to influence Federal employees, Members of Congress, and Congressional staff regarding specific grants or proposals.

(2) If a PHA uses non-Federal funds for lobbying on behalf of a specific application or proposal, it must submit disclosure documentation.

f. Every unfunded/previously approvable application in the

possession of the Field Office must be returned to the PHA. Every PHA shall be afforded the opportunity to review and revise its application to comply with this NOFA.

g. A PHA certification as to one of the following is required under section 5(j) of the Act for each application:

(1) The units requested are specifically required in FY 1990 to meet the one-for-one replacement requirement set out in section 18 of the Act to replace existing public housing approved between February 5, 1988 and July 27, 1990 for demolition/disposition; or

(2) The units requested are required to resolve ongoing litigation involving lack of assisted or minority housing opportunities or replacement units to be lost through sale to residents for homeownership approved by July 27, 1990; or

(3) The units requested, limited to 100 or less, are needed for family housing to satisfy demands not being met by the Section 8 Existing or Voucher rental assistance programs; or

(4) That 85 percent of the PHA's dwelling units:

(a) Are maintained in substantial compliance with the Section 8 housing quality standards (24 CFR 882.109); or

(b) Will be so maintained upon completion of modernization for which funding has been awarded; or

(c) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the Act (or a comparable State or local government program) and that there is a reasonable expectation, as determined by HUD in writing, that the application would be approved; or

(5) The application is for MROP.

h. A PHA submitting a replacement housing application:

(1) Must demonstrate that the replacement units, alone or together with other identified replacement units, will implement the PHA's Replacement Housing Plan submitted under 24 CFR 970.11, and

(a) Are for no fewer than the same number of units to be demolished or disposed of; and

(b) Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed of.

(c) To the extent departure from the same bedroom size is necessary to provide for the same number of units or house the same number of individuals and families, priority will be given to replacement housing for large families requiring three or more bedrooms.

(2) Should state whether the PHA still wants its application considered if its demolition/disposition application is not approved.

(3) Only section 5 financed and section 23 bond-financed (owned by a PHA instrumentality) leased housing projects that meet the following criteria may have MROP approved or may have demolition/disposition with replacement housing approved:

(a) Clear title is vested in the PHA;

(b) No legal obstacles exist affecting the PHA's use of the project for public housing during the forty-year required ACC period; and

(c) The project is covered by a cooperation agreement assuring tax exemption and municipal services.

i. Pursuant to section 6(j) of the Act, proposed projects other than replacement housing (paragraph 4h(1)(c) above) must be only for housing consisting of three or more bedrooms per unit, except where a HUD Field Office determination is made in writing that there is little or no need for housing with three or more bedrooms.

j. Pursuant to section 6(h) of the Act, every application for a new construction project must be accompanied by:

(1) A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

(2) A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing for large families through acquisition of existing housing or rehabilitation; and

(3) A statement that:

(a) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(b) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the Act, the application will be rejected.)

k. Applications for proposed projects must take into consideration required compliance with the following accessibility requirements:

(1) Architectural Barriers Act of 1968 and the implementing rule at 24 CFR part 40 including Appendix A (Uniform Federal Accessibility Standards) (see Notice PIN 89-49 (PHA));

(2) Section 504 of the Rehabilitation Act of 1973 and the implementing rule at 24 CFR part 8 (see Notice PIN 89-49 (PHA));

(3) Fair Housing Amendments Act of 1988 and the implementing rule at 24 CFR Part 100 (see Notice PIN 89-50 (PHA)).

l. To qualify for additional application rating points, a PHA may certify past and proposed compliance with section 3 of the Housing and Urban Development Act of 1968, and provide a description of actions taken to combat drug abuse (paragraph 6a(6)).

m. Group homes, intermediate care facilities, nursing homes, etc. may not be approved under the public housing program.

PUBLIC HOUSING DEVELOPMENT

5. Public Housing Development—Threshold Approvability

a. All development applications must meet the threshold requirements for approvability to be eligible for funding under the Fair Share-Exempt or Headquarters Reserve categories, or to be eligible for rating and ranking under the other development category.

b. To ascertain threshold approvability, the Field Office will review each application for required resolutions and certifications, and for compliance with all requirements of this NOFA and the FY 1990 detailed processing Notice. The Field Office will ensure that the PHA meets the requirements of legal eligibility (organization and local cooperation); acceptable certification of PHA intent to comply with all applicable civil rights laws; housing need and HAP compliance; administrative capability (management and development); environmental issues; housing type (section 6(h) of the Act relative to new construction); household type (section 6(j) of the Act relative to housing for families requiring three or more bedrooms); and section 5(j), certification.

6. Rating and Ranking—Other Public Housing Development Applications

Field Offices will rate threshold-approvable other development applications as follows: (Full points are to be given as identified if the statement is true for the PHA application, if not true, then no points are to be given).

a. Rating Factors:

	Points
(1) <i>Relative Need</i> —Application is for a project which will be located in a locality which:	
(a) Had previously been underfunded relative to its needs and the funding needs of other localities.....	20
or	
(b) Has a need but was not underfunded relative to its needs and the funding needs of other localities.....	5
(2) <i>Vacancy Rate</i> —Application is for a project in a locality that has a rental vacancy rate:	
(a) Of 5 percent or less.....	20
or	
(b) In excess of 5 percent.....	5
(3) <i>Relocation</i> —The proposed project would primarily assist households displaced, or to be displaced, by:	
(a) Federal action; or	
(b) A natural disaster in a Federally declared disaster area.....	10
(4) <i>Low density family housing</i> is proposed to be developed on scattered sites to expand housing opportunities.....	10
(5) <i>Experience in Developing/Managing Public Housing:</i>	
(a) The PHA's last project was developed:	
(i) In accordance with time frames; i.e., construction started (new or rehab) or DOFA occurred (acquisition of existing) within 30 months of the fund reservation date.....	5
(ii) In accordance with all HUD requirements.....	5
(iii) In accordance with the approved development cost budget.....	5
(iv) With no construction deficiencies identified.....	5
and	
(b) The vacancy rate in projects under management is not greater than 3 percent, indicating that the PHA will and can fully utilize the units applied for.....	5
or	
(c) The PHA has no past experience, but has submitted a plan which the HUD Field Office determined, demonstrates capability for, and the expectation of, expeditious quality development.....	10
(6) <i>Other Priorities:</i>	
(a) The application proposes a project which actively supports an area of local initiative (such as a Community Development Block Grant, urban revitalization, Enterprise Zone or other similar local activity).....	5

Points

(b) The PHA submitted a certification with its application that, pursuant to section 3 of the Housing and Urban Development Act of 1968, at least five percent of the construction contract or contract of sale amount (which may not be increased for this purpose) will be used to train and employ lower income persons residing in the area of a proposed new construction or substantial rehabilitation project, and that to the greatest extent feasible, contracts for work to be performed for that project will be awarded to business concerns located in, or owned in substantial part by, persons residing in, the area of the project. As such contracts are executed, evidence of compliance with prior year certifications shall be submitted by the PHA and referenced in subsequent applications.....	5
(c) The Field Office determines that a PHA is aggressively combatting drug abuse in public housing projects.....	5
Total possible points.....	100

b. Ranking Approvable Applications

Other development applications which have been rated under paragraph 6a, above, shall be ranked for selection for funding based on the rating points assigned, provided that applications for large families (three or more bedrooms) shall be ranked above and selected for funding before any application for less than three bedrooms, unless the next highest-ranked application for three or more bedrooms has fewer than 50 points. In such a case, an application for fewer than three bedroom units which is clearly superior to an application for three or more bedroom units may be selected for funding.

MAJOR RECONSTRUCTION OF OBSOLETE PUBLIC HOUSING

7. MROP Eligibility Requirements

a. An "obsolete project" must have design or marketability problems that have resulted in:

- (1) Vacancies of 25 percent or more of the units available for occupancy; and
- (2) Estimated reconstruction and other costs of at least 70 percent, but not more than 90 percent, of the total development cost limits for the area; and
- (3) The need to go to step 3 of the CIAP viability review. [See paragraph 3-9c of CIAP Handbook 7485.1 REV-4]

b. Eligibility for approving an MROP application will be determined by CIAP procedures as modified by this NOFA, including the threshold approvability requirements of paragraph 5 and the modified Technical Review Factors of paragraph 9.

(1) An MROP project must have long-term (40-year) viability after reconstruction.

(2) If partial demolition/disposition is required, a demolition/disposition application must be approved within the dates specified in paragraph 3 before approval. (MROP funds may not be used for total demolition/disposition.)

(3) An MROP project must meet the requirements of paragraph 4h(3).

c. Existing projects which consist of more than one building may have funding under MROP in any single year limited to one or more (less than all) of a project's buildings.

(1) Where separate portions of an existing project receive MROP funding in different fiscal years, each portion must be given a separate MROP project number and the funds reserved must be sufficient to complete all of the reconstruction needed to make the portion viable.

(2) Previously approved MROP projects are eligible to receive public housing development "amendment" funds, but only for necessary reconstruction work that was not known at the time of the initial fund reservation.

d. A combination of MROP and CIAP may be used in project reconstruction, e.g., where an existing project consists of family housing needing major reconstruction and elderly housing needing less extensive work. In such a situation, MROP funds could be reserved for designated buildings and the remaining buildings could be included in a CIAP project.

e. Management improvements are an ineligible cost under MROP; therefore, any proposed management improvements must be funded from the PHA's own operating funds or reserves, or from CIAP funding for management improvements which are PHA-wide at another project where comprehensive modernization is still in progress.

8. MROP Application Submission

a. A PHA applying for MROP funding shall submit a CIAP Application, (see paragraph 3-6, Handbook 7485.1 REV-4):

(1) The application must identify the entire project and explain how the project, in whole or in part, meets the eligibility criteria in paragraph 7. The application must identify the proposed physical and management improvement

needs, estimated costs, and funding sources.

(2) The PHA must also submit, with its MROP application, the PHA resolution referencing MROP and the certifications required by paragraph 4 above.

(3) If demolition/disposition is needed for long-term viability after reconstruction, the PHA must so state in its MROP application and must have submitted, within the required timetable, a demolition/disposition application which has been approved in accordance with paragraph 3a(1) of this Notice.

b. Following the CIAP Joint Review, the PHA shall promptly submit the Comprehensive Assessment/Program Budget (Form HUD-52825) and the Project Financial Forecast (Form HUD-52823).

9. MROP Rating and Ranking.

a. Field Offices will rate and rank threshold-approvable MROP applications in accordance with the CIAP technical review factors in chapter 3, CIAP Handbook 7485.1, REV-4, modified as follows:

1. Technical review factors	Point range
a. Extent and urgency of need, including lead-based paint abatement and physical accessibility needs.....	1-20
b. Extent of vacancies.....	1-10
c. PHA's modernization capability..	1-10
d. PHA's management capability.....	1-10
e. Adequacy of PHA's maintenance systems, including preventive and routine maintenance.....	1-10
f. Degree of cost-savings	1-5
g. Degree of resident involvement in PHA operations	1-5
h. Degree of PHA activity in resident initiatives, including resident management, economic development activities on behalf of residents, drug elimination efforts.....	1-5
i. Degree of PHA-wide resident employment.....	1-5
j. Local government and resident/homebuyer support for proposed reconstruction.....	1-20
Total possible points.....	100

b. Ranking Approvable Applications

Threshold-approvable applications that have been rated under paragraph 9a, above, shall be ranked based on the rating points assigned, as provided in paragraph 6b, above.

10. MROP Funding

a. MROP applications selected for funding shall:

1. Have estimated total costs of at least 70 percent, but not more than 90 percent, of, development cost limits for the area, calculated in accordance with Notice PIH 90-16 (HUD);

2. Be assigned a development project number; and

3. After MROP fund reservation, follow development procedures (24 CFR part 941 and Handbook 7417.1 REV-1), except:

(a) Reconstruction work must be competitively bid (i.e., turnkey may not be used); and

(b) CIAP modernization standards must be used.

b. The PHA must incorporate its approved MROP application into a PHA Proposal (Form HUD-52483-A).

c. The special MROP Annual Contributions Contract, included in Notice PIH 89-41 (HUD), must be used.

11. Applicability of Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and Federal regulations at 49 CFR part 24 (effective for HUD-assisted programs on April 2, 1989) govern the acquisition of real property and the displacement of any person (family, individual, business, nonprofit organization or farm) that moves from real property or moves personal property from real property, permanently and involuntarily, as a direct result of acquisition, rehabilitation or demolition for an assisted project, including public housing development and MROP.

a. Displacement should be minimized, but where it is unavoidable, timely referrals to comparable replacement units are essential to avoid excessive replacement housing payments. Also, to preclude claims by persons eligible for continued occupancy under 24 CFR part 960 and not scheduled to be displaced, PHAs carefully must follow policies governing the issuance of information notices and applicable temporary relocation policies.

b. Where necessary, reasonable relocation payments and other assistance under the Uniform Act are eligible development and MROP project costs.

FINDINGS AND OTHER MATTERS:

12. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public

inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC. 20410.

13. Information Collection

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1989 and have been assigned OMB control numbers 2577-0033, 2577-0036 and 2577-0044.

14. Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order.

15. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on

family formation, maintenance and general well-being within the meaning of the Order.

(The Catalog of Federal Domestic Assistance Program number is 14.850).

Authority: Section 5, United States Housing Act of 1937 (42 U.S.C. 14371); Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 33535(d)).

Dated: May 31, 1990.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-13990 Filed 6-15-90; 8:45 am]

BILLING CODE 4210-33-M

14 CFR Part 91

Monday
June 18, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Navigation Equipment Requirement in a
Terminal Control Area; Visual Flight
Rules Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25943; Amdt. 91-216]

RIN 2120-AD53

Navigational Equipment Requirement in a Terminal Control Area (TCA); Visual Flight Rules (VFR) Operations**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This action removes the navigational equipment requirement for aircraft operations conducted under visual flight rules (VFR) in a terminal control area (TCA).

EFFECTIVE DATES: The amendment to § 91.90(c) is effective July 18, 1990. The amendment to § 91.131 is effective August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. A. Wayne Pierce, Air Traffic Rules Branch, ATP-230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Background**

On October 8, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with very high frequency (VOR) or ultra-high frequency tactical air navigational aid (TACAN) navigational equipment, thereby eliminating, effective July 1, 1989, the previous exclusion from this requirement for helicopters.

On April 3, 1989, the Helicopter Association International (HAI) petitioned the FAA for an exception to the navigational equipment requirement for helicopters conducting operations under VFR or special visual flight rules (SVFR) in a TCA. Pending a final disposition of the HAI petition, and in contemplation of a related rulemaking proposal, the FAA amended the TCA Classification and TCA Pilot and Navigational Equipment Requirements final rule to delay the effective date of the equipment requirement applicable to helicopters until January 1, 1990 (54 FR 24882; June 6, 1989).

In response to the HAI petition and after review of the need for the navigational equipment requirement, the FAA proposed to eliminate the navigation equipment requirement for aircraft conducting operations under VFR in a TCA (Notice No. 89-17; 54 FR 26782; June 26, 1989). While the comment period closed on July 26, 1989, the FAA determined that further internal review and coordination with its field offices was necessary before a final determination could be made on the proposal. Therefore, the FAA further delayed the effective date of the equipment requirement for helicopters operating in a TCA until October 1, 1990 (55 FR 412, January 4, 1990), pending that determination.

Discussion of Comments

Nine comments were received in response to Notice No. 89-17. Commenters included the Air Transport Association of America, the Soaring Society of America, the National Association of State Aviation Officials, the Air Line Pilots Association, the National Air Traffic Controllers Association, and others. The following discussion summarizes the substantive comments received on the proposal.

One commenter stated that adoption of the proposal would be counter to two recommendations made by the TCA Task Group formed by former FAA Administrator Donald Engen. The recommendations advised the FAA to study the feasibility of (1) establishing TCA boundaries based on reference to an on-airport VOR and (2) the use of "gateway" VOR's for advisory service at each TCA.

Both recommendations were studied and neither was adopted as FAA policy for universal application at TCA locations. Therefore, on-airport VOR's and gateway VOR's have not been established at many TCA's, and the recommendations are not appropriate as a basis for requiring VOR equipment for VFR operations at all TCA's.

Other commenters recommended retaining the VOR/TACAN equipment since many TCA boundaries are based on radials and distances, based on distance measuring equipment (DME), of VOR's (VOR/DME or VORTAC).

The FAA uses both VOR/DME references and/or references to prominent visual landmarks when defining TCA boundaries. Although, in many instances, VOR/DME references are used to identify TCA boundaries, such use does not preclude visual reference to the surface as an acceptable means of navigation—it merely complements pilotage. TCA boundaries are depicted on charts used

for VFR flight operations and, as such, the boundaries can be associated with visual landmarks regardless of the use of VOR/DME references in defining those boundaries. However, the reasons for depicting such boundaries are to help those pilots who are trying to avoid a TCA to remain outside the TCA, and to assist pilots of large turbine-powered aircraft to operate above the floors of the TCA. It is significant that the equipment requirement pertains only to operations conducted within the TCA. Therefore, the fact that some boundaries are defined with reference to electronic navigational aids is not relevant to the equipment requirement.

The FAA recognizes the usefulness of VOR radials as an aid to pilots operating properly equipped aircraft when reference to the surface cannot be maintained and the aircraft is operating within, or in proximity to, a TCA. However, operations conducted under VFR can be accomplished by pilotage, dead reckoning, or with the aid of instrument navigation systems other than VOR or TACAN, e.g., Loran C, Omega, etc.

Comments also addressed the establishment and charting of VFR transition routes for operations through TCA's. Some commenters objected to elimination of the VOR/TACAN requirement based on the belief that such action would negate the usefulness of such routes.

Transition routes are established to facilitate VFR operations through the TCA. These routes are sometimes described by referring to prominent landmarks. In other instances, transition routes are based on reference to a VOR, and in still others, they are described by using a combination of VOR radials and visual landmarks or pilotage. When the route is defined by reference to a VOR, that method of navigation may become the primary means for flying the route. However, other navigational methods, such as area navigation, Loran C, or in the near future, Global Positioning System (GPS), may also be used. When the route is described by reference to visual landmarks or by a combination of landmarks and a VOR signal, reference to VOR provides an alternative means of navigation for aircraft so equipped.

When aircraft are cleared to operate under VFR along transition routes defined by VOR radials, controllers rely on compliance with those clearances and routes. An operator who is unable to comply would then request alternate instructions. The FAA anticipates that the need for alternate instructions based on the elimination of the requirement for aircraft under VFR operation to carry a

VOR receiver will be rare. That belief is based on the following. Only approximately 10 percent of all general aviation aircraft in the United States are currently without a VOR receiver; the use of radar vectors and visual landmarks is prevalent as the basis for air traffic control (ATC) clearances to VFR flights within TCA's; and the trend is growing for general aviation operators to install other navigational systems, such as Loran C.

An organization representing air traffic controllers objected to the proposal based on the traffic complexity and density associated with TCA's. Further, the organization cited a need to control aircraft operating within TCA's and recent FAA initiatives (such as the Mode C transponder requirement) to improve safety in and around TCA's as rationale for retaining the equipment requirement.

The FAA agrees that a high level of control over aircraft operations within TCA's is essential to flight safety. Such control is facilitated by the requirements for two-way radio communications and ATC clearances to operate within any TCA. VFR operations can be adequately controlled by limiting the areas, routes, and altitudes of the aircraft's operation. Normally, such limitations are accomplished by issuing clearances which use radar vectors, reference to visual landmarks, or VOR references. While sometimes those clearances would require reference to a VOR facility to comply, the FAA believes that clearances using VOR radials for VFR navigation are the least used of the available options. Even those clearances which use VOR references can often be complied with by the use of other electronic navigational equipment, such as Loran C or other area navigation equipment.

One organization stated that it does not believe that VOR is the only means of ensuring a consistent navigational capability; however, it contends that since the general aviation fleet most impacted by the requirement is already VOR-equipped, continuance of the requirement does not constitute an undue burden on VFR operators.

The FAA agrees that the majority of general aviation aircraft is equipped with VOR receivers. Industry estimates indicate that 89.5 percent of general aviation aircraft are VOR-equipped. It can also be presumed that the vast majority of those non-equipped aircraft normally operate in areas other than TCA's. The FAA does not believe that eliminating the VOR equipment requirement associated with TCA's will result in operators removing such equipment from their aircraft. The

probability is that most general aviation aircraft that operate in proximity to TCA's are VOR-equipped, notwithstanding the requirements of section 91.90. However, the FAA has determined that it is not necessary for aircraft operated under VFR in a TCA to carry VOR equipment to maintain the current high level of safety for operations in that airspace. Furthermore, any burden, financial or otherwise, caused by an unnecessary regulation is unwarranted.

Another organization asserted that FAA pilot training and written test requirements were sufficient basis for retaining the VOR requirement for operations in a TCA. That organization believes that VOR provides a means of precise navigation and that the ability to precisely navigate when operating in a TCA is essential.

Elementary instruction regarding VOR equipment, airways, and instrumentation is provided in basic flight training; however, the FAA does not believe that the receipt of that basic training is sufficient justification for requiring VFR operators to carry VOR equipment. Pilots are required, during the certification flight check, to demonstrate an ability to operate and navigate by reference to whatever navigational system is installed in the aircraft—not necessarily VOR.

The FAA agrees that reference to VOR provides a means of precise navigation. However, the usefulness of a VOR for precise navigation through a TCA presumes that the intended, or assigned, route of flight is facilitated by a VOR along that route. Very often VOR radials are not used to define a route of flight through a TCA. Although precise navigation is useful, it is not essential to VFR operations, particularly since most VFR operations through a TCA are authorized without specific routings or along routes depicted with surface references. Other types of navigational equipment, such as Loran C, can provide an adequate means for precise navigation for VFR flights.

One organization contends that pilots may be delayed or denied access to the TCA if the aircraft is not capable of navigating by reference to a VOR.

The FAA disagrees with the contention that pilots would be denied access or delayed access to a TCA because the aircraft is not VOR-equipped. Although VFR routes are being charted through TCA's and, when possible, reference to a VOR is being included, these routes are not predicated upon VOR navigation alone. Navigating by visual reference to the surface is and will remain an acceptable option, with VOR as an alternative method for those

operators preferring to navigate via VOR reference. The use of VOR radial and reference to DME in the design of a TCA is not intended for facilitating operations within the TCA; conversely, such reference is to facilitate operators of appropriately equipped aircraft from transgressing TCA boundaries.

Several commenters stated that alternative navigational systems that are available for VFR operations in a TCA could be added to the VOR or TACAN required equipment options.

The FAA agrees that several area navigation systems are being used by operators as secondary means of navigation, or as a primary means when VOR is available for cross reference. However VOR remains the primary instrument navigation system, and reliance on those area navigation systems is contingent on VOR reference. Although area navigation systems are installed in many aircraft not equipped with VOR, such systems are not approved for instrument flight rules (IFR) navigation in the Nation's airspace system. The FAA does not consider requiring a navigation system that is not approved for both VFR and IFR navigation as appropriate. However, by eliminating the equipment requirement for VFR operations, the FAA has, in effect, allowed use of any navigational aid the operator considers suitable for the operation being conducted.

Several commenters expressed concern regarding operations conducted in or through a TCA when the aircraft would be operated above a layer of clouds or surface based obscuration which precludes pilotage in a non-equipped aircraft.

When granting authorization to enter or transit a TCA, ATC may issue instructions which include a route and altitude requisite to the authorized operation. As with any ATC instruction, the pilot is required to advise ATC if compliance with that instruction cannot be accomplished. The FAA acknowledges that many such authorizations are contingent on following a route that requires either VOR navigation or pilotage. A pilot's inability to comply with the ATC-issued routing may result in denial or delay of the pilot's request for TCA access during periods when traffic or controller workload precludes authorizing the operation along a pilot-elected route or controller-assigned routing. The FAA believes the potential for such delays or denials regarding ATC authorization for access to a TCA may be a factor in operators electing to equip their aircraft with a VOR receiver. The FAA considers that the simultaneous

occurrence of all these factors—pilotage is not possible, the aircraft is not VOR-equipped, and ATC cannot allow the pilot to operate with a degree of latitude or provide radar vectors—will be no greater than already exists. Furthermore, such an occurrence would result in an individual delay or denial regarding a TCA operation and as such does not warrant requiring all operators to be VOR-equipped.

Need for Regulation

The FAA has determined that a requirement for aircraft being operated under VFR is not necessary to maintain safety in TCA's and that the continuation of such a requirement could pose an unnecessary burden on aircraft operators.

The Rule

Accordingly, the FAA is amending the regulation to remove the VOR/TACAN navigational equipment requirement for aircraft operations conducted under VFR. VOR/TACAN navigation equipment will only be required for operations conducted under IFR.

Regulatory Evaluation Summary

Introduction

Executive Order 12291 dated February 17, 1987, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA determined that this final rule is not "major" as defined in the executive order, so a full regulatory evaluation of alternative approaches has not been prepared. A more concise regulatory evaluation has been prepared, however, which includes an analysis of the safety and economic consequences of this rule. This analysis is included in the docket, and it quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits and impacts.

A summary of the regulatory evaluation is contained in this section. For a more detailed analysis, the reader

is referred to the full evaluation contained in the docket.

Costs

This rule is relieving in nature and will impose no costs on either society or aircraft operators/owners. This assessment is based on rationale contained in the following discussion for each of these groups.

Impact on Society

In terms of society, this rule will not impose any additional costs in the form of a reduction in aviation safety.

After a reexamination of the need for VOR/TACAN, which was in part prompted by the petition from Helicopter Association International, the FAA concludes that there is no longer a need to require VOR/TACAN navigational equipment for aircraft conducting operations in a TCA under VFR and that adequate aviation safety will still be maintained. Under this rule, aviation safety will remain intact by employing the use of one of two options for operations in a TCA conducted under VFR: (1) flight operations with navigational equipment or (2) flight operations without navigational equipment. With navigational equipment, a pilot operating under VFR will have the option of using either VOR/TACAN or other types of navigation equipment (namely, LORAN C). Either type of navigational equipment selected will continue to ensure that the current level of aviation safety remains intact. Without navigational equipment, a pilot operating under VFR conditions while in a TCA will be allowed to use pilotage or deadreckoning procedures (for example, visual landmarks or radar vectors). This option will also ensure that an adequate level of aviation safety remains intact.

Impact on Aircraft Operators/Owners

Aircraft operators/owners will not be adversely impacted by this rule because it is cost relieving in nature. Aircraft operators will no longer be required to equip their aircraft with VOR/TACAN navigational equipment for operations in a TCA under VFR. This action will only impact those aircraft operators without VOR/TACAN navigational equipment who would have elected to operate under VFR in a TCA in the absence of this rule.

The options of operating either with or without navigation equipment, as promulgated by this rule, will allow aircraft operators more flexibility to operate under VFR in a TCA while maintaining a sufficient level of aviation safety.

Benefits

The primary benefit of this rule is the elimination of a cost burden for aircraft operators/owners (namely, rotorcraft types) who operate in a TCA under VFR without VOR/TACAN navigational equipment before October 1, 1990. The secondary benefit of this rule is flexibility afforded to aircraft operators/owners by allowing the option of using navigational equipment other than VOR/TACAN or no equipment while operating under VFR in a TCA.

As of October 1, the delayed effective date of the navigational equipment requirement under Amendment Nos. 61-80, 71-11, and 91-205, (Terminal Control Equipment Requirements; 53 FR 40313), will expire. Those amendments essentially require all aircraft operating in a TCA to be equipped with VOR or TACAN navigational equipment and were initially scheduled to become effective July 1, 1989. However, this effective date was delayed for operators of helicopters until October 1, 1990.

This cost relieving benefit will be realized without jeopardizing safety.

Conclusion

In view of the estimated zero cost of compliance, coupled with the elimination of a cost burden without jeopardizing aviation safety, the FAA finds that this final rule is cost-beneficial.

International Trade Impact Statement

This rule will have no effect on the sale of foreign aviation products nor services in the United States, nor any effect on the sale of U.S. products or services in foreign countries. It will neither impose costs on aircraft operators nor U.S. or foreign aircraft manufactures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to insure, among other things that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." The small entities which could be potentially affected by the implementation of this rule are unscheduled operators or aircraft for hire owning nine or fewer aircraft.

As discussed above, only those unscheduled aircraft operators (namely, rotorcraft) without VOR/TACAN navigational equipment who operate under VFR in a TCA will be impacted by this rule. These operators will be

impacted in the form of a cost relieving nature. Since this rule will not impose any costs on aircraft operators, the FAA finds that it will not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

The regulation herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The regulation is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination has

been placed in Docket 25943. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 91

Aircraft, Airports, Airspace, Air traffic control, Air transportation, Aviation safety, Pilots, Safety.

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 14—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The following amendments are made to part 91 in effect as of the effective date of this amendment:

2. Section 91.90(c) is revised to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person

may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) *For IFR operations.* An operable VOR or TACAN receiver; and

(2) *For all operations.* An operable two-way radio capable of communications with ATC on appropriate frequencies for that terminal control area.

* * * * *

The following amendment is made to part 91 in effect as of August 18, 1990:

3. Section 91.131 (c) is revised to read as follows:

§ 91.131 Terminal control areas.

* * * * *

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) *For IFR operations.* An operable VOR or TACAN receiver; and

(2) *For all operations.* An operable two-way radio capable of communications with ATC on appropriate frequencies for that terminal control area.

* * * * *

Issued in Washington, DC, June 11, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-13941 Filed 6-15-90; 8:45 am]

BILLING CODE 4910-13-M

The following are the names of the members of the American Medical Association who have been elected to the office of President for the year 1917. The names are listed in alphabetical order of their last names.

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Federal Register

Monday
June 18, 1990

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

Grants and Cooperative Agreements; Notice of Availability

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Dean John A. Knauss, Marine Policy Fellowship; Open for Applications

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dean John A. Knauss Marine Policy Fellowship; open for applications.

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the State Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Shephard, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 427-2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474-7086
University of California—(619) 534-4440
University of Connecticut—(203) 445-5108

University of Delaware—(302) 451-2841
University of Florida—(904) 392-5870
University of Georgia—(404) 542-7671
University of Hawaii—(808) 948-7031
University of Illinois—(217) 333-1824
Louisiana State University—(504) 388-6710

University of Maine—(207) 581-1436
University of Maryland—(301) 454-5690
Massachusetts Institute of Technology—(617) 253-7131

University of Michigan—(313) 763-1437
University of Minnesota—(612) 625-2765
Mississippi-Alabama Sea Grant Consortium—(601) 875-9341
University of New Hampshire—(603) 862-2175

New Jersey Marine Sciences Consortium—(201) 872-1300
State University of New York—(516) 632-6905

University of North Carolina—(919) 737-2454

Ohio State University—(614) 292-8949
Oregon State University—(503) 754-2714
University of Puerto Rico—(809) 832-3585

Purdue University—(317) 494-3584

University of Rhode Island—(401) 792-6800

South Carolina Sea Grant Consortium—(803) 727-2078

University of Southern California—(213) 743-6068

Texas A&M University—(409) 345-3854

Virginia Graduate Marine Science

Consortium—(804) 924-5965

University of Washington—(206) 543-6600

University of Wisconsin—(608) 262-0905

Woods Hole Oceanographic

Institution—(508) 548-1400 x2578

SUPPLEMENTARY INFORMATION:**Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Federal Fellows Program—Purpose of the Fellowship Program**

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100-220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

- Students must submit applications to a state Sea Grant Director, who will be the applicants sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).

- Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close

of business on September 30th of any given year.

- The selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1991 a Fellow will receive a stipend amount of \$24,000.

Application

An application will include:

- Personal and academic resume or curriculum vitae.

- Education and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience in the way of career development. (not to exceed 2 pages)

- No more than two letters of recommendation with at least one being from the students major professor. Thesis papers are not desired.

- A letter of endorsement from the sponsoring state Sea Grant Director.

- Copy of undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

- Academic Performance.
- Communication Skills (both written and verbal).

- Diversity and Appropriateness of Academic Background.

- Additional Qualifying Experience.
- Support of Major Professor.
- Support of Sea Grant Director.

- Overall class balance in Discipline, Geographic, Ethnic and Gender Representation.

Selection

Selection of finalists will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to

the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or the judgement of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to ten. The overall number of Fellows will not exceed twenty per year.

Dated: June 6, 1990.

Alan R. Thomas,

Acting Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 90-14017 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-12-M

FAST TRACK

Monday
June 18, 1990

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for
Public and Indian Housing

Indian Housing Development—
Announcement of Funding Availability for
Fiscal Year 1990; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3067; FR-2758-N-01]

Indian Housing Development; Announcement of Funding Availability for Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces the availability of funding for Fiscal Year (FY) 1990 for development of Indian Housing (IH) and provides the applicable criteria, processing requirements and development action dates. Eligible Indian Housing Authorities (IHAs) are invited to submit applications for Indian Housing developments in accordance with the schedule. This Notice is not applicable to the Public Housing program.

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: HUD Indian Programs Field Office for the jurisdiction.

SUPPLEMENTARY INFORMATION:

Background:

The amount of funding provided under the FY 1990 HUD Appropriations Act (Pub. L. No. 101-144) for new Indian Housing development is \$130,098,036, and the amount provided for amendments to existing contracts is \$32,000,000. In addition to these funds, there is \$6,001,059 of grant authority carryover.

Not all of these funds will be available for new units. Replacement units for those that have been approved for demolition or disposition must also be funded from the amount available for new IH development, and the amount appropriated for amendments is to be spent only for amendments, in accordance with the Appropriations Act.

Of the \$130,098,036 for IH development, HUD Headquarters is retaining \$5,000,000, which will be used to cover replacement units, approved in accordance with part 970. The remaining \$125,098,036 will be allocated to the HUD Indian Housing Programs Field Offices (FOs), as described below. If any of the funds retained for replacement units are not needed for such units, the funds will be distributed to the FOs after August 1, 1990, on the same proportional basis as the amounts for new units.

The amount of grant authority carryover is the total of (1) budget authority recaptured during FY 1989, but not reserved for reuse during FY 1989, and (2) budget authority assigned in FY 1989, but not reserved in FY 1989. Budget authority recaptured during FY 1990 from previously reserved developments may not be reused and will be rescinded.

IHA Applications for New Construction

Eligible IHAs are invited to submit applications to the applicable HUD Indian Programs Field Office (FO) for IH developments to be developed in accordance with program regulations at 24 CFR part 905 and the environmental requirements of 24 CFR part 50. Applications for replacement units must be submitted by IHAs to HUD Headquarters in connection with requests for approval of demolition or disposition actions, in accordance with regulations at 24 CFR 970, the Public Housing Demolition, Disposition and Conversion Handbook 7486.1, Notice PIH 89-19, and any later issued HUD Notice that is applicable. Applications for amendment funds will be submitted to the applicable FO as the need arises, in accordance with section 8 below.

An IHA submitting more than one application for new units should state its priorities for receiving funding in an accompanying letter. Requests for Mutual Help and Rental Units from the same IHA should be submitted as two separate applications. IHA questions should be directed to the local HUD FO. No development application may be funded in FY 1990 if that application is received at the FO or postmarked after 5:15 p.m. (local time), August 17, 1990.

Funding Assignments for New Units

Each of the six Indian Housing Program Field Office service areas has been designated as the smallest practicable area for allocation of assistance. The funds available for new units in FY 1990 are being assigned to the FOs on a fair share basis pursuant to 24 CFR 791-403(d), using the Bureau of Indian Affairs (BIA) estimates of Indian housing needs and other housing need data not reflected by BIA estimates. Funds assigned to FOs are not development specific. A meaningful competitive process, described below, will be used to select the applications to be funded. The following chart specifies the availability of the \$125,098,036 of budget authority available for new units for Fiscal Year 1990 for the various HUD Offices of Indian Programs, and it includes any funds to be expended on off-site sewer and water:

Indian region	Number of units	Allocation
Chicago	276	\$16,258,660
Oklahoma City	290	13,417,332
Denver	255	17,234,027
Phoenix	591	45,236,747
Seattle	110	8,070,010
Anchorage	224	24,881,260
Total	1,746	125,098,036

In addition to this new funding, the carryover funds of \$6,001,059 recaptured from the various Offices of Indian Programs will be returned to the field office where the recaptures originated and will be added to the pool of development funds in the field office for allocation using the method specified in this notice of fund availability. Funds will be identified as to their metropolitan or non-metropolitan use to comply with the regulations at 24 CFR 791.403(a) that require the total of funds for the Indian Housing and Public Housing programs to be reserved so that on a nationwide basis, at least 20 percent—but not more than 25 percent of the total contract authority available for any fiscal year—shall be allocated for use in non-metropolitan areas. This identification does not apply to FY 1990 amendment funds.

If the county in which the IH site is located is part of a Metropolitan Statistical Area (MSA), then funds for that IH will be considered metropolitan. Otherwise, funds will be considered non-metropolitan. IH developments that contain both metropolitan and non-metropolitan housing should have a ratio of metropolitan to non-metropolitan housing established that will be maintained throughout the development of the development. The FO shall consult with the IHA on the ratio prior to Program Reservation.

Development Application Submission Procedures

a. Field Offices will accept applications for new units from eligible IHAs pursuant to 24 CFR 905.206 and Handbook 7450.1 using Form HUD-52730.

i. Eligible IHAs are those which have

A. The legal authority to develop, own and operate housing developments under the United States Housing Act of 1937 (Act), as described in §§ 905.108 and 905.109;

B. The required Tribal and/or local cooperation, as described in § 905.106; and

C. Administrative capability in both management and development, as described in § 905.207.

ii. Separate applications shall be submitted for Rental and Mutual Help units.

b. Each application must be accompanied by an IHA Resolution and a letter from the unit of general local government (Tribe or other body), signed by the chief executive official, in support of the proposed IH development. An applicant may request "planning funds."

i. The IHA resolution shall include assurances that the IHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973.

ii. Pursuant to 24 CFR 24.630, which implements the Drug-Free Workplace Act of 1988, the IHA shall incorporate into its resolution the Certification Regarding Drug-Free Workplace Requirements as directed by Notice 89-39 entitled "Certifications by IHAs for a Drug-Free Workplace" issued August 11, 1989.

iii. The IHA Resolution shall incorporate a statement explaining how solid waste disposal for the development will be addressed.

iv. The IHA Resolution shall incorporate a statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.

v. When a Tribal government is the unit of general local government, a letter executed by the chief executive official must assure HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR part 905 B, appendix I, Item 6 (c)). When the unit of general local government is other than a Tribal government, a letter from that government unit signed by the chief executive official shall assure HUD that funds will be budgeted and committed for access road needs.

vi. The IHA Resolution must advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty days of any substantial change.

c. Every unfunded application in possession of the FO before the issuance

of this Notice must be returned to the IHA. Each IHA shall be afforded an opportunity to review and revise its application to comply with this Notice. The FO development staff will provide technical assistance to any IHA in this situation, upon request.

Development Application Content

a. In accordance with section 6(j) of the United States Housing Act of 1937, proposed developments for housing consisting of three or more bedrooms per unit shall receive priority, unless the Housing Development Division Director determines in writing that there is no need for housing with three or more bedrooms. To assist in this determination, the IHA may submit, with its application, information (from its waiting list of prospective resident applications over a reasonable period of time) that supports a finding that there is no need for housing units with three or more bedrooms. An IHA resolution and a letter signed by the chief executive official of the unit of general local government, stating that there is no need for housing units with three or more bedrooms, is required.

b. In accordance with section 6(h) of the United States Housing Act of 1937, every application submitted in FY 1990 for a new construction development must be accompanied by evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation. In the alternative, the IHA may submit a certification that there is insufficient existing housing in such neighborhood to undertake the development of housing for large families through acquisition of existing housing or rehabilitation.

c. Applications for proposed developments must take into consideration required compliance with section 504 of the Rehabilitation Act of 1973. The implementing rule, 24 CFR part 8, which as published June 2, 1998, was effective July 11, 1988. Further, the IHA shall follow the Uniform Federal Accessibility Standards regulation (24 CFR part 40) and the Architectural Barriers Act of 1968 in making units accessible/adaptable.

d. Group homes, intermediate care facilities, nursing homes, etc., are not eligible under the IH program regulation.

Development Application Review and Ranking

a. To ascertain completeness and eligibility, Field Offices shall review each application for required resolution(s) and required letters of support. The IHA must meet the requirements of legal eligibility (organization and local cooperation) and

administrative capability (management and development).

b. The statutory priority for families requiring three or more bedrooms will be provided as follows. For each program type (low rent or Mutual Help), the applications will be sorted into three groups according to unit size, based upon the proposed bedroom distribution indicated on the original application. Group I will be composed of applications for projects consisting only of units with three or more bedrooms. Group II will be composed of applications for projects that have a mix of units with three or more bedrooms and units of fewer than three bedrooms. Group III will be composed of applications for projects containing only units of fewer than three bedrooms. Applications in Group I will receive priority funding over Group II, and Group II applications will receive priority over Group III applications.

c. Complete and eligible applications of Group I, Group II, and Group III will be ranked separately for each program. The score calculated for the application of an IHA that has not previously been funded will be adjusted before ranking by multiplying the score by a factor of 2.5 to compensate for a lack of experience on which to base a rating. The rankings will be based on awarding points to each application for the following categories:

i. The relative unmet IHA need for housing units compared to the other eligible applications in that group, based on IHA waiting lists and the total number of units in management and in the development pipeline. For IHAs that have not previously been funded, the points for this category will be 40. For all other IHAs, this need will be measured for each program type by dividing the number of families on the waiting list for the size of units involved, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. The maximum number of points an IHA can receive is 40 points.

ii. The relative IHA occupancy rate compared to the occupancy rates of other eligible IHA applications in that group. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Multifamily Information Retrieval System national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the

total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA in the group (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base an occupancy rate, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

iii. Length of time since the last Program Reservation date. The number of days from January 1, 1990 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of days, since the last Program Reservation for any IHA in the group. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

iv. Current IHA development pipeline activity. Each IHA will start with 20 points. For each IHA development that was not completed by January 1, 1990, points will be deducted as follows:

A. For each IHA development not having an approvable Development Program submitted within one year of Program Reservation date (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

B. For each IHA development not achieving construction start within 30 months (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

C. For each IHA development not meeting HUD requirements for administration of development contracts as set forth in the regulations and handbooks, 4 points are deducted—up to a maximum deduction of 20 points.

D. The maximum number of points an IHA can receive is 20 points. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category.

Selection of Recipients for Development of New Units:

a. The ranking process will produce an ordered list of IHAs that may receive funding. The order is established by the total number of points the application received in the rating process. The application with the highest point total

among Group I applications will be funded first, the next highest will be funded second, continuing through the Group I applications and then through Group II applications, and then Group III applications until funds are exhausted.

b. The size of projects awarded shall be based upon the following table to ensure meaningful competition based on need. Exceptions to the maximum size of projects awarded based on the table shall be made only where good cause exists.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above.....	200
750 to 999.....	100
500 to 749.....	75
400 to 499.....	50
300 to 399.....	40
200 to 299.....	30
199 or fewer.....	20

If an IHA that serves more than one distinct Indian community submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

Funding Assignments for FY 1990 Amendments

Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs, (2) amendment funds related to the impact of the change in calculation to Total Development Cost calculations mandated by Public Law 101-144 (103 Stat. 846), or (3) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests and that are not in response to the change in Total Development Cost calculations, will be evaluated using the following order of priority:

a. Projects under construction with HUD-approved litigation settlement payable.

b. Projects that require a cost increase to cover immediate HUD-approved correction of safety and/or health hazard, that is not associated with off-site sewer and water needs.

c. Projects under construction with a cost increase needed to cover HUD-approved off-site sewer and water component.

d. Projects with active Invitation to Bid or Request for Proposal status that

require nominal HUD-approved change orders.

e. Projects with active Invitation to Bid or Request for Proposal status that require a nominal HUD-approved cost increase to execute construction contract or contract of sale.

f. Projects with active Indian Health Service project summary that require a HUD-approved cost increase before a memorandum of agreement can be executed.

g. Projects that require a HUD-approved nominal cost increase to achieve project close-out.

h. Projects that require a HUD-approved cost increase for any reason not listed above.

Tests for Compliance with Published Indian Maximum TDC

a. HUD may approve a Total Development Cost for a development that exceeds the published maximum allowable TDC by up to 10 percent for special situations, such as—but not limited to the following:

i. Relocation (temporary displacement) costs as required by other regulations or laws;

ii. On-Site Solid Waste start-up costs necessary to initiate existing solid waste removal services; and

iii. Energy efficient housing design.

b. HUD may approve a TDC for a development that exceeds the published maximum allowable TDC by more than 10 percent when, for good cause, HUD determines that a higher TDC is warranted for special situations, such as—but not limited to the following:

i. Unforeseen site improvement costs (on-site only, not including any cost related to roads or driveways).

ii. Donations.

A. Donations provided to a development for normal costs associated with the typical HUD-approved on-site development are treated as offsets to the budget; therefore, they are controlled by the published Indian TDC limitation. The Indian program applies a pro rata interpretation to donations, requiring that each unit is allocated a pro rata share of the total donation. Additional unit yield in any IH development may not be attributable to donations.

B. Donations provided to a development for a specific HUD-approved enhancement above and beyond the typical HUD development, for example, super energy efficiency, may be an appropriate reason to exceed the Indian TDC limitation.

C. Donations for off-site infrastructure may be considered good cause to exceed the published TDC limitation.

This includes the donation of funds from the State of Alaska that are applied to the existing development units in a pro rate fashion.

c. The test for compliance with the Indian TDC limitation is not affected by the source of funds; that is, whether the source is new development funds or amendment funds.

Findings

a. *Environment.*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

b. *Information collections.*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of

Management and Budget and assigned OMB control number 2577-0030.

Authority: Secs. 5 and 6, United States Housing Act of 1937 (42 U.S.C. 1437c, 1437d); U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1990 (Pub. L. No. 101-144).

Dated: June 6, 1990.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-14010 Filed 6-15-90; 8:45 am]

BILLING CODE 4210-33-M

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, including physicians, dentists, and other health care professionals. Its primary purpose is to advance the science and practice of medicine, to protect the public interest, and to promote the highest standards of medical education and practice. The Association publishes the Journal of the American Medical Association, which is one of the most influential medical journals in the world. It also provides a wide range of services to its members, including continuing medical education, advocacy, and representation in government and international organizations. The Association is committed to the highest standards of ethical conduct and to the promotion of the health and welfare of the public.

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Head Start Report

**Monday
June 18, 1990**

Part VIII

Department of Health and Human Services

Office of Human Development Services

Head Start-State Collaboration Projects; Availability of FY 1990 Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13600-90-3]

Availability of FY 1990 Funds and Request for Applications: Head Start-State Collaboration Projects

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of financial assistance and request for applications for Head Start-State Collaboration Projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces the availability of funds for competing Head Start-State Collaboration Projects. The purpose of these projects is to create significant partnerships between Head Start and States in order to better meet the increasingly complex, intertwined, and difficult challenges of improving the long-term outcomes for economically disadvantaged children and their families. These grants will extend the resources of the Administration for Children, Youth and Families (ACYF) through the OHDS Regional Offices to promote Head Start participation in State planning and service delivery.

DATES: The closing date for receipt of applications is August 17, 1990.

ADDRESSES: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue SW., room 341F-2, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Patricia Divine-Hawkins (202) 245-0565, Merrily C. Beyreuther (202) 245-0452 or Marlys Gustafson (202) 245-0579, Program Support Division, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Description of the Head Start Program

Head Start is a national program which provides comprehensive developmental services for low-income preschool children. Since its inception, Head Start has provided educational, social, medical, dental, nutrition and mental health services to over 11 million children and their families across the nation. Parent involvement is an

important part of the Head Start program.

Head Start is now a \$1.4 billion program serving nearly half a million low-income children and their families in over 2,000 communities across the United States each year. Now celebrating a quarter century of services, Head Start is helping to break the cycle of poverty through a family-oriented, comprehensive, and community-based program to address developmental goals for children, employment and self-sufficiency goals for adults, and support for parents in their work and child-rearing roles. Launched by the Office of Economic Opportunity in 1965, Head Start is now administered by the Administration for Children, Youth and Families (ACYF) in the Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS). Locally, the program is administered by 1,300 community-based non-profit organizations and school systems.

In the past several years, successful collaboration between Head Start and other programs has begun to increase, and many States currently coordinate some services with Head Start. In some areas, complex and sophisticated collaborative structures are already in place; in others, new initiatives are beginning to appear. The Head Start-State Collaboration Projects to be funded under this announcement are intended to assist States in furthering the development of collaborative initiatives and structures, regardless of their existing service delivery system or current level of coordination.

The Head Start program is based on the premise that all children share certain needs, and that children of low-income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start approach is based on the philosophy that (1) a child can benefit most from a comprehensive, interdisciplinary program to foster normal growth and development and remedy problems as expressed in a broad range of services; and (2) the child's entire family, as well as the community, must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives, and standards of a comprehensive program are encompassed.

B. National Trends

During the latter half of the 20th century, the United States has undergone considerable social change accompanied by changes in public and private programs and service delivery systems.

Five trends, in particular, have important implications for Head Start and State programs which assist low-income families with young children:

- First, the rapidly growing labor force participation of mothers with young children has increased the need for full-day child care while parents work. This trend will increase among low-income mothers with preschool children as a result of the Family Support Act of 1988 which requires many previously exempt welfare mothers to participate in JOBS training and employment;
- Second, State policies and programs which promote developmentally appropriate preschool experiences for low-income children are increasing rapidly in response to empirical evidence that such programs represent an important investment in the future;
- Third, States are beginning to implement Federal legislation (Pub. L. 99-457) which expands services for preschool children with disabilities and their families;
- Fourth, there is a growing need for training and employment opportunities, such as those available through Head Start and other community programs, in order to improve entry level opportunities for welfare clients and other low-income individuals who are transitioning into the labor force; and
- Fifth, as the number of families who gain access to these programs increases, there is a growing need to ensure that program quality is continued and that benefits to children from their participation in early childhood programs are not lost in making the transition to kindergarten and elementary school.

1. Increasing Labor Force Participation of Mothers

During the past decade, child care and early childhood education have become critical issues as mothers from all income levels have joined the work force. Today, approximately 51 percent of Head Start parents are employed, and this percentage is expected to increase as programs under the Family Support Act of 1988 are implemented by the States. To better meet the needs of these families, local Head Start grantees are entering into agreements with other child care programs to provide extended

child care coverage for working Head Start parents and to increase opportunities for other low-income families in the community.

2. Growing State Investments in Preschool Programs

State investment in preschool programs is growing rapidly, particularly for children at risk for school failure. Many States are coordinating these programs with Head Start.

Thirty-five States now have State-funded preschool programs. Of this number, 30 have general laws while six have both general and Head Start enactments. Sixteen States include Head Start in State-funded preschool programs. Eleven States have implemented laws which provide supplemental funds exclusively to expand Head Start programs. Thirty-nine States have developed agreements between Head Start and local education agencies (LEA's) to improve services for children with disabilities.

Head Start has a goal of assuring that all economically disadvantaged children have an opportunity for a Head Start experience prior to their entering school. Achievement of this goal will require substantial collaboration with States and the private sector to insure that all eligible children are reached.

3. Increasing Opportunities for Children With Disabilities

There is increasing recognition of the importance of early intervention for children with disabilities, although there is a widespread shortage of early childhood programs which are able to integrate these children into the regular classroom. Head Start is the largest preschool program in the nation. It is also the largest program in which children with disabilities are included or "mainstreamed" with other children. Children with disabilities who are mainstreamed in regular classrooms now account for 13.3 percent of all children enrolled in Head Start.

Because of its long experience and comprehensive approaches to serving children with disabilities and their families in regular settings, Head Start is coordinating with other programs which serve disabled children and expects to collaborate with State Education Agencies as they carry out their responsibility to identify and provide comprehensive services to children who are disabled from birth through age five.

4. Promoting Self-Sufficiency Among Low-Income Families

There is increasing effort, primarily through welfare reform, to assist low-income parents in achieving greater

economic well-being. In support of self-sufficiency goals for parents, Head Start works with States and local employers to promote training and employment opportunities, both for Head Start parents and for other low-income families. Head Start expects to work closely with the States, both to ensure that Head Start parents gain access to appropriate training and employment opportunities and to assist in making training and employment available for other low-income individuals through Head Start. For example, Head Start could provide training for child care providers, nutrition workers, and other occupations of interest to participants in the JOBS program. Easing the transition of low-income families from part-time training or employment to full-time employment supported by full-day care for children is one area where Head Start and State programs can work together to achieve mutual goals.

5. Increasing Benefits to Children

As early childhood programs become more widely available, there is increasing emphasis placed on both the quality of these early childhood programs and on the transition between preschool and entry into the public school system. For example, in support of the President's goal to improve educational opportunities for the nation's young children, the National Governors' Association (NGA) is working collaboratively with the White House to develop objectives and to examine issues related to children's readiness for school.

A central aspect of programmatic quality is the availability of well-qualified staff. Head Start is a major source of training within the early childhood field and has been a leader in the development of innovative and effective training systems. The Child Development Associate (CDA) training program and credential is nationally recognized by the early childhood profession as the professional credential awarded to educators who are skilled caregivers for children aged birth through five. Currently 75 percent of Head Start teachers have obtained the CDA credential or other degree in early childhood education. The CDA credential is also listed as a qualification for teaching staff and/or program directors in the child care regulations of 42 States and the District of Columbia.

Another important issue is that of helping young children retain the benefits gained from Head Start and other high quality early childhood programs once they enter kindergarten and elementary school. There is

increasing recognition that coordination between preschool and elementary school and the continued involvement of parents in their children's education can ease the transition for young children and promote continued success. Head Start expects that Collaboration Projects will facilitate cooperation with State education agencies, school systems, and professional organizations on a variety of transition issues.

C. Need for Collaboration

As a result of these converging trends and the shift toward greater State responsibility and authority, there is a need for greater coordination of services at the Federal, State and local levels. This is particularly true for Head Start, which plays a central role in the support of low-income families, interfacing with State welfare and job training programs, State education systems, State child care programs, national organizations and foundations, and many local partners. Head Start anticipates working closely with States to expand training opportunities for child care providers, to assist in the implementation of the Family Support Act, and to expand opportunities for high quality, comprehensive services for the nation's preschool children.

D. Purpose of Financial Assistance

The purpose of the financial assistance to be made available under this announcement is to create significant partnerships between Head Start and ten States in order to demonstrate effective strategies for increasing State-level collaboration between Head Start and other programs. These partnerships are intended to (1) facilitate the development of policies and initiatives which benefit Head Start participants and other low-income families throughout the State; (2) facilitate collaboration between Head Start and a wide range of State-level early childhood activities which, in turn, will support local community coordination to better meet the needs of low-income families; and (3) highlight Federal and State commitment to low-income children and their families.

It is recognized that many States already collaborate extensively with Head Start in a variety of ways. Others are just beginning to plan for coordination. The intent of this financial assistance is to assist States in achieving their service and coordination goals, regardless of the magnitude and scope of collaboration already underway or the extensiveness of systemic change contemplated for the future.

In particular, the Head-State Collaboration Projects are to develop strategies for coordination and linkages between programs, or to enhance existing partnerships in support of low-income families throughout the State. The grants to be awarded under this announcement are NOT to be used to:

- (1) Supplant ongoing collaboration between OHDS Regional Offices, Head Start grantees, and other programs in the State;
- (2) provide direct services to Head Start families or other low-income families; or
- (3) provide training or technical assistance to Head Start grantees in carrying out their program responsibilities.

Part II. Responsibilities of the Grantee

A. Collaboration and Linkages

An important goal of the Head Start-State Collaboration Projects is to foster working coalitions of OHDS Regional officials, State officials, State Head Start Association presidents, Head Start program directors, and early childhood professionals in order to promote more coordinated approach to planning and program development throughout the State. A principal role for the Head Start-State Collaboration Projects will be to develop collaboration among Head Start, State education agencies, State welfare and employment agencies, and other programs serving low-income families.

Head Start-State Collaboration Projects will be expected to engage in a variety of activities to achieve these goals. These include, but are not limited to:

- Providing for Head Start representation on State planning and policy boards related to services for low-income families, especially Family Support Act Implementation Planning Boards;
- Establishing a State point of contact for agencies and planners seeking information about Head Start policies, procedures and services;
- Participating in or establishing and coordinating task forces, work groups, and other planning bodies which support the coordination of Head Start with other programs;
- Developing public/private partnerships to increase and coordinate resources for Head Start and other early childhood programs;
- Sharing and disseminating information through briefings, the media, and inter-agency forums;
- Developing plans for special initiatives to further the mutual goals of Head Start and other participating organizations;

- Sponsoring State-wide professional coalitions of organizations committed to child and family issues; and

- Sponsoring State-wide conferences to address a range of issues for the coordination of Head Start and other programs.

All Head Start-State Collaboration Projects must coordinate closely with the OHDS Regional Offices and with the National Head Start Office. Grants will be administered by the OHDS Regional Offices, and grantees will be expected to meet with Regional officials at least twice a year. In addition, grantees will be required to attend one two-day meeting in Washington, DC each year of the grant for information-sharing with other grantees and the national Head Start office.

B. Specific Priorities

In addition to promoting collaboration and linkages among Head Start, State programs, and local programs generally, Head Start-State Collaboration Projects must address one or more of four priority areas in order to substantially improve opportunities for low-income children and their families: (1) State welfare reform; (2) State-funded preschool programs; (3) transition to public schools; and (4) mainstreaming of children with disabilities. State-sponsored programs in these areas all serve low-income families, including many Head Start participants. Collaborative initiatives can help to improve the ability of both Head Start and other programs to meet the needs of these families.

1. State Welfare Reform

A major issue for Head Start is collaboration with the States around implementation of the Family Support Act of 1988, which was enacted to increase the employability of welfare recipients and help them achieve self-sufficiency. This legislation includes a new JOBS program which must be implemented by the States over the next two years. Many Head Start parents will be required to participate in JOBS training and employment activities geared toward economic self-sufficiency. A key provision of JOBS is the requirement for child care to support training and employment. Head Start expects to coordinate with States to ensure that quality child care is available to JOBS participants and to families receiving transitional child care benefits, many of whom are also eligible for Head Start services.

Many Head Start grantees and delegate agencies are already engaged in agreements with State and local child care programs to provide full-day care

for the children of working Head Start parents and other low-income families. In addition to partnerships for full-day child care services, Head Start is working to provide support for Head Start parents who participate in the JOBS program and make training opportunities available for JOBS participants who wish to enter occupations available through Head Start.

A Head Start-State Collaboration Project with objectives related to welfare reform could facilitate and enhance the coordination of Head Start with State implementation of the Family Support Act of 1988 through a variety of activities including, but not limited to:

- Development of partnerships with welfare reform agencies and employers to provide appropriate training and employment opportunities for Head Start parents and to provide flexibility for welfare mothers as they move along the continuum of education, training, and part-time employment to full-time employment;
- Development of partnerships to broaden the availability of CDA training for State early childhood staff and entry-level training for welfare recipients who wish to enter the early childhood field; and
- Development of partnerships to provide full-day care for children of working Head Start parents and other low-income families, including assistance to individual Head Start and other early childhood programs in negotiating mutually beneficial contracts.

2. State Preschool Programs

In recent years, many States have enacted new legislation and implemented preschool programs for low-income families and children at risk of developmental delay. Some of these programs supplement Head Start grants in order to serve additional children; some take a Head Start-like approach but do not fund Head Start grantees; and others expand Head Start services to low-income families whose income is slightly above the limit for Head Start.

Head Start-State Collaboration Projects involving State preschool programs are expected to improve the representation of Head Start in State-level policy discussions concerning preschool programs for low-income families. In addition, Collaboration Projects must work with Head Start grantees, officials in the State education agency, the State Head Start Association, and professional organizations to promote early childhood programs which meet the

diverse needs of families in local communities throughout the State. Suggested activities include but are not limited to:

- Working to increase the number of children who participate in the Head Start program;
- Working to ease the transition of three-year-olds from their homes or infant/toddler programs to Head Start and State preschool programs which serve primarily four-year-old children;
- Working to enrich Head Start's comprehensive service strategy by enhancing services to the older and younger siblings of Head Start children as well as to other members of the family;
- Working to increase training opportunities for early childhood professionals through CDA or State credentials;
- Helping to find innovative ways to address low salary structures and poor employee benefits in the early childhood field;
- Promoting collaboration between State education agencies and State child care licensing agencies to improve the standards of quality and reduce regulatory barriers facing early childhood programs; and
- Promoting the development and dissemination of developmentally appropriate practices and materials.

3. Transition to Public Schools

Over the next several years, Head Start will continue to focus on the transition of children from Head Start to public schools. A major thrust of this effort is the support of educational reform in the States in order to identify ways of enhancing the success of children once they enter the school system. Head Start-State Collaboration Projects which have transition objectives are expected to work closely with Head Start to improve transition for low-income children and their families throughout the State. The Head Start-State Collaboration Projects can support linkages with public schools through a variety of activities including, but not limited to:

- Working with Head Start grantees and school systems to implement parent involvement initiatives and early childhood units in the public schools;
- Developing partnerships with other early childhood programs, elementary schools, and professional groups to improve the transition between preschool and elementary school, particularly for children who are at risk of school failure;
- Assisting in the dissemination of Head Start's written policies, suggested approaches, and products to improve

transition practices and linkages between preschool programs and elementary schools; and

- Working with Head Start grantees and school systems to increase before- and after-school care for young children when lack of supervision during non-school hours may increase their risk for failure in elementary school.

4. Mainstreaming of Children With Disabilities

Head Start is the largest preschool program in the United States which mainstreams children with disabilities. In addition, these children receive a wide range of other services appropriate to their special needs. As a result, many other programs look to Head Start for leadership and assistance in this area.

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99-457, enacted in 1987) calls for States to provide comprehensive, coordinated, interdisciplinary services to enhance the development of disabled children and minimize their potential for developmental delay, reduce the need for institutionalization and costs to society, and enhance the capacity of families to meet the special needs of their children. In particular, Pub. L. 99-457 requires State education agencies to service all three, four and five-year-old children with disabilities by 1991. This legislation encourages local education agencies to coordinate with Head Start in order to increase mainstreaming opportunities for these children.

States whose projects include objectives in this area must work closely with Head Start and their various State agencies with responsibility for screening and delivery of services for children with disabilities. Relevant activities include, but are not limited to:

- Establishing communication with State interagency coordinating councils established under Pub. L. 99-457, more than 20 of whom already have Head Start representation;
- Developing and disseminating information to assist local Head Start and public school programs in planning and service delivery;
- Working with Head Start's training and technical assistance network to coordinate activities and resources for children with disabilities and their families;
- Helping facilitate coordination between Head Start and public school personnel in developing or implementing procedures to ensure the timely referral, evaluation, and placement of children from Head Start into elementary school in accordance with Federal and State regulations;

- Collaborating with the Head Start Resources Access Projects (RAPs) to encourage the development of cooperative agreements between local Head Start and public elementary schools to enhance the transition of young children with disabilities; and
- Encouraging the continued participation of local Head Start personnel in the public schools' child identification efforts ("Child Find") and other early identification activities.

C. Preparing Project Proposals

A proposed project should reflect both the State's philosophy, priorities and goals and an understanding of Head Start's philosophy, priorities and goals, with clearly articulated objectives and activities which specifically address the needs of Head Start families and other low-income populations. The proposal should clearly show how the goals of both the State and Head Start will be served by the proposed project.

Applicants must describe the range and scope of current collaborative efforts in their States. They must also demonstrate how their proposed project extends or amplifies existing activities, initiates new collaborative efforts to address important problems or gaps in service delivery systems, or improves the overall delivery of services to low-income children and their families.

Successful applicants must propose activities which significantly address the issues and priorities described in this announcement. Applicants are especially reminded of Head Start's fundamental principle of serving the whole family as the key strategy for improving the developmental, social and economic conditions for disadvantaged children. This principle incorporates developmental goals for children; self-sufficiency, parenting, and other goals for parents; professional goals for early childhood staff; and goals for the improvement of service delivery systems.

Applicants are expected to take a long-range, comprehensive and multidisciplinary view in proposing their projects. Proposals must demonstrate familiarity with Head Start and other programs serving low-income children and their families, State needs and resources, successful collaborative activities, and barriers to coordination. Applicants must articulate major issues and problems within their State and discuss how the proposed project will support their goals and priorities for low-income families with young children. Applicants must articulate how the proposed project fits into other State initiatives or priorities. Significant

partnerships with relevant public and private organizations, including those in the corporate sector, are strongly encouraged.

The proposal must clearly set forth goals and specific objectives of the project which address the issues described in this announcement. The application must also describe current activities and long-range goals for the ongoing coordination of Head Start with other relevant programs and activities which the proposed project addresses.

The proposal must demonstrate a strong need for assistance to improve the State-level collaboration between Head Start and other programs.

Available resources (other than ACYF) which will assist and be coordinated with the project must be described, and evidence of firm commitments must be supplied. These resources may include other Federal and non-Federal resources, including in-kind contributions. Applicants are urged to present non-Federal resource contributions which exceed the minimum matching requirement of 25 percent non-Federal funds. Successful applicants proposing a non-Federal share in excess of the required 25 percent will be required to provide the higher amount.

The project objectives must be supported by a sound approach which details the magnitude and scope of activities to be conducted and how they will be carried out to achieve expected results. The proposal must include a detailed management plan for work to be completed during each budget period which (1) clearly addresses project goals; (2) links objectives and activities; and (3) can be accomplished within the proposed project period and budget. The management plan must include charts showing timelines and level of effort for each objective and activity as well as which staff will be carrying out the work. The proposal must discuss relevant technical and operational issues, anticipate barriers to achievement of project goals, and present a strategy for overcoming difficulties.

Applicants must demonstrate sufficient personnel resources and staff competence to assure that project activities can be successfully carried out. Cooperating organizations or agencies, their contributions, and their strengths must be described. Letters of commitment should be included whenever possible. In addition, position descriptions and resumes of key personnel, including those of consultants and cooperating organizations, should be included in the proposal. Position descriptions must specifically describe

the job as it relates to the proposed project. Resumes must indicate how the proposed staff are qualified to carry out the project activities. The project director must demonstrate strong management experience and relevant technical expertise. Key individuals must be knowledgeable about the Head Start program. The proposal must include a line-item budget for each budget period requested. The budget narrative must fully explain and justify the line items in the budget categories in section B of the Form 24 Budget Information section. Sufficient detail must be included to facilitate determination of allowability and relevance to the project. The budget must be commensurate with the scope of the project and reasonable in relation to the work proposed.

Project budgets must include travel and per diem for the project director to attend two meetings annually with OHDS Regional officials as well as to attend one two-day national meeting of all Head Start-State Collaboration Projects in Washington, DC during each year of the project.

Several categories of activities are specifically precluded from the Head Start-State Collaboration Projects. The ACYF will not support core administrative functions or other activities that essentially support the applicant's ongoing administrative functions. Neither will ACYF fund projects which duplicate or replace ongoing collaboration being carried out with the Regional Offices or Head Start grantees. Projects which would provide training and/or technical assistance (T/TA) to local Head Start programs are also precluded. However, the purchase of T/TA by a Head Start Coordination Project grantee for its own use or for its members' use (as in the case of a consortium) is acceptable when T/TA is necessary to carry out project objectives.

Part III. Evaluation Criteria

In considering how the applicant will carry out the responsibilities addressed under Part II of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

1. Objectives and Need for Assistance (20 points)

Pinpoint any relevant economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the

applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected (20 points)

Identify results and benefits to be derived. The anticipated contribution to policy or practice must be indicated.

3. Approach (35 points)

Outline a plan of action pertaining to the scope of the project, and detail how the proposed work will be accomplished for the project. Cite factors which might accelerate or decelerate the work and the reasons for taking this approach. Describe any unusual features of the project. Provide quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution, and a description of their knowledge of and experience in Head Start.

4. Staff Qualifications and Experience (25 points)

Present a biographical sketch of the program director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. List the name, training, and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

Part IV. Grant Award and Management

A. Eligible Applicants

Eligibility is restricted to State governmental entities. Each Head Start Collaboration Project should be located in the Office of the Governor or administratively placed so that access to the Governor and other key policy makers or planning bodies is assured. This administrative requirement is intended to facilitate the development of mutually beneficial policies and strategies and to highlight a mutual

commitment to low-income children and families.

Applications must be signed by the Governor, or by his or her designated representative with authority to act on behalf of the State. However, Governors may designate a lead agency or State-level commission to carry out a proposed project.

Although Head Start grantees and associations, private social service agencies, corporations, and other groups with an interest in early childhood are NOT eligible applicants, States are encouraged to form joint-venture projects in order to more comprehensively address the objectives of this announcement. Cross-cutting initiatives involving the State Head Start Association, appropriate professional and civic organizations, corporate partners, and other relevant entities are encouraged.

B. Selection

Proposed projects will be competitively reviewed against the evaluation criteria in this announcement. High-ranking projects will be recommended for funding to the Commissioner, Administration for Children, Youth and Families, who will make final funding decisions.

Applicants will compete nationally for a total of ten grants. It is anticipated that approximately one grant will be funded in each of the ten OHDS Regions. However, in the event that no high ranking applications are received from States in a particular OHDS Region, additional applications may be funded in one or more of the remaining Regions. Each applicant is eligible for only one grant.

C. Funding

Approximately \$850,000 of financial assistance is available in fiscal year 1990 under this program announcement.

Approximately ten (10) grants will be funded under section 649 of the Head Start Act (42 U.S.C. 9844). Funding levels of up to \$85,000 per year will be awarded for no more than three years.

D. Project Period

Applicants may apply for a project of up to 36 months duration and are encouraged to develop multi-year projects. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake a more complex and in-depth project than can be completed in one year. Applicants should note that a multi-year project is a single project that requires more than 12 months to complete. It is not a series of unrelated project

presented in chronological order over a three-year period.

Funding after the first budget period of a multi-year project is non-competitive. Each budget period of a multi-year project will be 12 months. The non-competitive funding for the second and third years will depend on the grantee's progress in achieving the objectives of the project according to the approved management plan, the availability of Federal funds, and compliance with applicable statutory, regulatory, and grant requirements.

E. Grantee Share of Project

Grantees must provide at least 25 percent of the total approved cost of the project each year, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Applicants are urged to contribute non-Federal resources to the project which exceed the minimum requirement. Applicants are especially encouraged to form significant public/private funding partnerships which demonstrate a strong, multi-faceted commitment to the challenge of coordination throughout the State.

The method of computing the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its sources must be included in the application.

F. Management

Each Head Start-State Collaboration Project will be managed by one of the ten OHDS Regional Offices with overall coordination provided by the National Head Start Office in the Administration for Children, Youth and Families. Collaboration Project directors must attend two meetings annually with Regional officials. They must also attend one two-day national meeting of all Head Start-State Collaboration Project directors in Washington, DC, during each year of the project.

Part V. The Application Process

A. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

B. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Nebraska, Minnesota, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine areas need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. OHDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

HDS must obligate the funds for these awards by September 30, 1990. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on September 17, 1990 in order for HDS to receive, consider, and accommodate SPOC input.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Head Start-State Collaboration Projects, Office of Human Development Services, Grants and Contracts Management Division, room 341-F.2, Hubert H. Humphrey Building,

200 Independence Avenue, SW., Washington, DC 20201. A list of the Single Points of Contact for each State and Territory is included in appendix A of this announcement.

Part VI. Instructions for Completing and Submitting the Application

A. Contents of Application

Each copy of the application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4-88) (page i).
2. Budget Information (Standard Form 424A, REV 4-88) (pages ii-iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv-v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88) (pages vi-vii).
5. Certification Regarding Anti-Lobbying (page x).
6. Organizational Capability Statement.

Applicants should provide a brief (no more than two pages, single-spaced) description of how the applicant agency is organized and where the project will be positioned. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide collaboration and indicate the purposes, clients, points of coordination, and overall budgets of these other agencies.

7. Program Narrative Statement (pages 1 and following, 50 pages maximum, single-spaced).

Special Note: Applications with program narrative statements exceeding 50 single-spaced pages will not be considered for funding.

8. Supporting Documents (pages SD-1, SD-2, etc.; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Applications

1. Standard Forms 424 and 424A: Follow the instructions in Appendix B.
2. Budget Justification: Provide breakdowns for major budget categories and justify significant costs.
3. Standard Forms 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, Certification Regarding Lobbying, and Application Certifications for Profit Making Organizations: Self explanatory.
4. Program Narrative Statement: Follow the outline of the Preparation of the Program Narrative (Part IV) and the Evaluation Criteria (Part V).
5. Supporting Documentation: Self explanatory. Each application will be copied by the Government in order to

provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements should be followed:

a. Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the States participation in issues or initiatives which would give further support to the application. Resumes must be limited to one page.

b. The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

C. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below.

Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue SW., room 341F-2, Washington, DC 20201.

The original copy of the application must have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The application Form 424 must be signed by the Governor or a designated representative with authority to act for the State and to assume the State's obligations under the terms and conditions of the grant award.

In applications for multi-year projects, line 15a of the Form 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

The Catalog of Federal Domestic Assistance Number (13.600) and Title (Project Head Start) must be clearly identified on the application (SF 424, box 10).

D. Closing Date for the Submission of Applications

The closing date for applications submitted in response to this program announcement is August 17, 1990.

1. Deadlines

Applications shall be considered as meeting the announced deadline if they are either:

(a) Received on or before the deadline date at the address specified in the Submission of Application Section; or

(b) Sent on or before the deadline date and received in time for the ACYF independent review under Chapter I-62 of the HHS Grants Administration Manual.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

Hand delivered applicants will be accepted at the OHDS Grants and Contracts Management Division office during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

2. Late Applications

Applications which do not meet the criteria in the above paragraphs are considered late applications. ACYF will notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadline

ACYF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Application Review Process

The Commissioner of the Administration for Children, Youth and Families will determine the final action to be taken with respect to each grant application received under this announcement.

Applications submitted in a timely manner will undergo a pre-review to determine: (1) That the applicant is eligible in accordance with the Eligible Applicant section of this announcement; (2) that the application proposes project objectives which are responsive to this Announcement; and (3) that the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation.

Complete applications that conform to all of the requirements of this program announcement will be subjected to a competitive review and evaluation process. An independent review panel will evaluate each application against the criteria included in part III of this announcement. The results of the competitive review will be used to assist the Commissioner in making final funding decisions.

The Commissioner makes grant awards consistent with the purpose of the Head Start Act, all relevant statutory and regulatory requirements, the Head Start Collaboration Project goals and requirements set forth in this announcement, geographic diversity of applications, and the availability of funds.

After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing.

Successful applicants will be notified through an official Notice of Financial Assistance Award (NFAA). The award will state the amount of ACYF funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACYF matching share requirement.

(Catalog of Federal domestic Assistance Program Number 13.600, Project Head Start)

Dated: May 14, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 17, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905.

Alaska

None.

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 542-5004.

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074.

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445-0613.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156.

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Tel. (202) 727-9111.

Florida

Karen McFarland, Director of Intergovernmental Coordination, Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (904) 488-8144.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656-3855.

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085.

Idaho

None.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610.

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725.

Kansas

None.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382.

Louisiana

None.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261.

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Tel. (617) 727-3253.

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Tel. (517) 375-1838.

Note: Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911, Tel. (517) 334-6190.

Minnesota

None.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 421 West Pascagoula Street, Jackson, Mississippi 39206, Tel. (601) 960-4282.

Missouri

Louis Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834.

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210-State Capitol, Helena, Montana 59620, Tel. (406) 444-5522.

Nebraska

None.

Nevada

Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420.

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420.

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025.

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations

Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2658

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

Texas

Ralph Boeker, Jr., Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463-1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Virginia

None

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504-4151, Tel. (206) 753-4978

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741

Note: Please direct correspondence and question to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agaña, Guam 96910, Tel. (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Palau

None

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774-0750

BILLING CODE 4130-01-M

Appendix B

APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Preapplication <input type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED _____	Applicant Identifier _____
3. DATE RECEIVED BY STATE _____		State Application Identifier _____	
4. DATE RECEIVED BY FEDERAL AGENCY _____		Federal Identifier _____	

5. APPLICANT INFORMATION Legal Name: _____		Organizational Unit: _____	
Address (give city, county, state, and zip code): _____		Name and telephone number of the person to be contacted on matters involving this application (give area code): _____	

6. EMPLOYER IDENTIFICATION NUMBER (EIN): <div style="border: 1px solid black; width: 150px; height: 20px; margin: 5px 0;"></div>	7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/> A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
--	---

8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY: _____
--	--

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px 0;"></div> TITLE: _____	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: _____
---	---

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): _____	13. PROPOSED PROJECT: Start Date: _____ Ending Date: _____
---	--

14. CONGRESSIONAL DISTRICTS OF: a. Applicant _____ b. Project _____	15. ESTIMATED FUNDING: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> </table>	a. Federal	\$.00	b. Applicant	\$.00	c. State	\$.00	d. Local	\$.00	e. Other	\$.00	f. Program Income	\$.00	g. TOTAL	\$.00
a. Federal	\$.00																				
b. Applicant	\$.00																				
c. State	\$.00																				
d. Local	\$.00																				
e. Other	\$.00																				
f. Program Income	\$.00																				
g. TOTAL	\$.00																				

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No
--	---

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED		
a. Typed Name of Authorized Representative _____	b. Title _____	c. Telephone number _____
d. Signature of Authorized Representative _____	e. Date Signed _____	

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required factsheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State us only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance policy, complete address of the applicant, and name and telephone number of the persons to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
 - "New" means a new assistance award.
 - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
 - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/

budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorizes representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs**SECTION A — BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
l. Program Income	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
13. Federal					
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				(e) Fourth
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks:					

SF 424A (4-86) Page 2
Prescribed by OMB Circular A-102

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BILLING CODE 4130-01-C

Instructions for the SF-424A**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not* requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The

amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4. Column (a), Section A, provide similar column headings on each sheet. For each program function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-4—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts in Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section (A).

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Standard Form 424B (4-88)

Prescribed by OMB Circular A-102

OMB Approval No. 0348-0040

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900 subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C.

276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with Pub. L. 93-438 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

U.S. Department of Health and Human Services, Certification Regarding Drug-Free Workplace Requirements, Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the

Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress,

or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization _____

Authorized Signature _____

Title _____

Date _____

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue SW., Washington, DC 20201-0001

[FR Doc. 90-14053 Filed 6-15-90; 8:45 am]

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Reader Aids

Federal Register

Vol. 55, No. 117

Monday, June 18, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, June

22319-22764	1
22765-22888	4
22889-23064	5
23065-23182	6
23183-23418	7
23419-23538	8
23539-23698	11
23699-23884	12
23885-24070	13
24071-24212	14
24213-24546	15
24547-24854	18

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
6143	23419
6144	23885
6145	24547
6146	24549
6147	24551

Administrative Orders:

Presidential Determinations:	
No. 90-21 of	
May 24, 1990	23183

5 CFR

890	22889
-----	-------

Proposed Rules:

550	23088
-----	-------

7 CFR

29	23699
51	22765, 22772, 23836, 24026
55	23421
301	22319, 22320
352	23065
400	23066
800	24030
910	22774, 23539, 24213
916	24215
917	24215
948	23069
953	22775
982	23185
989	24701
998	22776
1980	23887

Proposed Rules:

58	24248
352	24093
908	23938
918	24094, 24096
928	22797
944	24249
982	23205
989	23445
998	24097
999	23205
1068	23086
1139	22798
1714	23748
1810	23553
1948	22920
1980	23553

8 CFR

103	23345
210a	23345

9 CFR

381	23070
-----	-------

Proposed Rules:

3	23748
92	22338
309	23100
310	23100
317	23100
318	22921, 23030
320	22921, 23030
381	22921

10 CFR

81	23422
170	23836
435	23842

Proposed Rules:

61	23206
----	-------

12 CFR

337	23186
506	22891
1611	22323

Proposed Rules:

9	24581
203	22923
208	23941
210	23208
225	22348, 23446
250	23941

13 CFR

108	24072
123	23072

Proposed Rules:

121	22799
-----	-------

14 CFR

11	24202
39	22328, 22329, 22779, 23187-23190, 23699, 23701, 23888-23898, 24073, 24224, 24225
71	22331, 23191, 23422, 24553
75	23702
91	24822
95	23191, 23899
97	23199, 24554
121	23046
125	23046
127	23046
129	23046
135	23046
382	23539

Proposed Rules:

Ch. I	22351, 22800, 23749
39	22351, 22358, 22800, 22806, 22924, 23218-23231, 23446, 23749, 23945, 23947, 24250-24253
71	23233, 23234, 23448, 23449, 23507, 23836, 23948, 23949, 24026, 24581
75	23234

382.....23450	22 CFR	117.....23202, 23434, 24231	414.....23435
15 CFR	35.....23424	162.....23202	434.....23738
774.....22892	211.....23638	165.....23202, 23728, 23729, 24231	435.....23738
Proposed Rules:	23 CFR	Proposed Rules:	43 CFR
381.....22808	658.....22758	117.....22822, 22823	5400.....22916
16 CFR	Proposed Rules:	165.....23250, 24269	5440.....22916
305.....22893, 23899	635.....22812	334.....24115	44 CFR
401.....23900	24 CFR	36 CFR	7.....23078
432.....23545	201.....24075	1234.....23730	64.....24086
17 CFR	203.....24075	37 CFR	65.....24088, 24089
30.....23902	234.....24075	Proposed Rules:	67.....24090
229.....23909	905.....24722	5.....24270	67.....24568
230.....23909	Proposed Rules:	38 CFR	Proposed Rules:
239.....23909	86.....22722	3.....23930	67.....24125, 24586
240.....23909	100.....24370	36.....23730	45 CFR
249.....23909	251.....22887	Proposed Rules:	801.....23884
Proposed Rules:	252.....22887	3.....22932	46 CFR
3.....24254	255.....22887	39 CFR	52.....24234
171.....24254	791.....23670	111.....24560	54.....24234
230.....23751	26 CFR	40 CFR	61.....24234
240.....23751	48.....23076	35.....22994, 24343	63.....24234
19 CFR	602.....23076	51.....24687	Proposed Rules:
152.....22894	Proposed Rules:	52.....22332, 22334, 22784, 23547, 23730, 23735, 23931, 24060, 24080	28.....24131
Proposed Rules:	1.....23235, 23755, 23776	60.....23077	308.....23103, 24275
10.....24582	602.....23755, 23776	80.....23658	47 CFR
201.....24100	27 CFR	81.....23932	1.....23082
207.....24100	19.....23634	82.....24490	73.....23084, 23935-23937
20 CFR	197.....23634	123.....22748	Proposed Rules:
626.....23634	251.....23634	130.....22748	2.....23952
636.....23634	Proposed Rules:	136.....24532	21.....23254
638.....23634	9.....22925	148.....22520	22.....23562
675.....23634	28 CFR	180.....23934, 24116, 24117	43.....23254, 23563
676.....23634	0.....22901, 22902	185.....23736	73.....23107, 23108, 23565, 23953
677.....23634	29 CFR	261.....22520, 23634	74.....23254
678.....23634	18.....24227	262.....22520	78.....23254
679.....23634	1627.....24078	264.....22520	94.....23254
680.....23634	1910.....23433, 24070	265.....22520	48 CFR
684.....23634	2200.....22780	268.....22520, 23935	1.....24092
685.....23634	2619.....24227	270.....22520	19.....24092
688.....23634	2676.....24228	271.....22520, 22916, 24232	23.....24092
689.....23634	30 CFR	280.....23737	42.....24092
21 CFR	917.....22903	281.....23549	52.....24092
74.....22895	920.....22904	302.....22520	1501.....24578
178.....22898	925.....22907	Proposed Rules:	1502.....24578
226.....23702	935.....22913	52.....22933, 23556, 23950, 24585	1503.....24578
442.....24026	942.....23345	141.....22752	1506.....24578
449.....24026	948.....23703	180.....24116, 24117	1509.....24578
452.....23634	Proposed Rules:	228.....23251	1510.....24578
510.....23703, 24226	77.....24526	260.....24119	1514.....24578
520.....23075, 24226, 24556	220.....23248	261.....24026, 24119	1515.....24578
522.....23075	914.....22928	262.....24119	1516.....24578
558.....23423, 24226	917.....24113	264.....24119	1517.....24578
864.....23510	935.....22929-22931, 23776	265.....24119	1519.....24578
Proposed Rules:	31 CFR	268.....24119	1522.....24578
333.....23235, 23450	515.....24556	270.....24119	1530.....24578
334.....23235	32 CFR	271.....24119	1531.....24578
335.....23235	202.....24557	280.....24692	1532.....24578
341.....23235	297.....24557	799.....22359	1533.....24578
344.....23235	Proposed Rules:	41 CFR	1536.....24578
347.....23235	199.....23554	101-26.....24086	1545.....24578
348.....23235	33 CFR	42 CFR	Proposed Rules:
350.....23235	1.....23930	400.....24561	14.....24208
355.....23235	100.....23200, 23201, 24078, 24079, 24229	411.....24561	15.....24208
356.....23235		405.....22785, 23435	25.....24208
357.....23235		410.....22785	31.....24068
358.....23235		413.....23435	52.....24208
444.....23450			1509.....23109
448.....23450			1510.....23109, 24276
820.....24544			

1512.....	23109
1527.....	23109
1552.....	23109, 24276

49 CFR

217.....	22791
219.....	22791
571.....	24240
1000.....	23937

Proposed Rules:

171.....	24210
172.....	24350
173.....	24210, 24350
192.....	23514
195.....	23514
571.....	24278, 24280
581.....	24284
1039.....	24132

50 CFR

17.....	24241
33.....	23549
263.....	23550
267.....	23550
301.....	23085
611.....	22794
620.....	22336
641.....	23086
650.....	22336
652.....	22336, 24184
659.....	22795
661.....	23087, 23443, 24247
672.....	22794, 22796, 22917, 22918, 23745
675.....	22919

Proposed Rules:

17.....	23109, 24133
20.....	23178
40.....	23522
215.....	23777
264.....	23565
269.....	23565
651.....	24289, 24290
674.....	23454

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List June 11, 1990

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$620.00 domestic, \$155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	\$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	¹ Jan. 1, 1990
4	16.00	Jan. 1, 1990
5 Parts:		
1-699	15.00	Jan. 1, 1990
700-1199	13.00	Jan. 1, 1990
1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0-26	15.00	Jan. 1, 1990
27-45	12.00	Jan. 1, 1990
46-51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53-209	19.00	Jan. 1, 1990
210-299	25.00	Jan. 1, 1990
300-399	12.00	Jan. 1, 1990
400-699	20.00	Jan. 1, 1990
700-899	22.00	Jan. 1, 1990
900-999	29.00	Jan. 1, 1990
1000-1059	16.00	Jan. 1, 1990
1060-1119	13.00	Jan. 1, 1990
1120-1199	10.00	Jan. 1, 1990
1200-1499	18.00	Jan. 1, 1990
1500-1899	11.00	Jan. 1, 1990
1900-1939	11.00	Jan. 1, 1990
1940-1949	21.00	Jan. 1, 1990
1950-1999	24.00	Jan. 1, 1990
2000-End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1-199	20.00	Jan. 1, 1990
200-End	18.00	Jan. 1, 1990
10 Parts:		
0-50	21.00	Jan. 1, 1990
51-199	17.00	Jan. 1, 1990
200-399	13.00	^a Jan. 1, 1987
400-499	21.00	Jan. 1, 1990
500-End	26.00	Jan. 1, 1990
11	11.00	Jan. 1, 1990
12 Parts:		
1-199	12.00	Jan. 1, 1990
200-219	12.00	Jan. 1, 1990
220-299	21.00	Jan. 1, 1990
300-499	19.00	Jan. 1, 1990
500-599	17.00	Jan. 1, 1990
*600-End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1-59	25.00	Jan. 1, 1990
60-139	24.00	Jan. 1, 1990
140-199	10.00	Jan. 1, 1990
200-1199	21.00	Jan. 1, 1990

Title	Price	Revision Date
1200-End	13.00	Jan. 1, 1990
15 Parts:		
0-299	11.00	Jan. 1, 1990
300-799	22.00	Jan. 1, 1990
800-End	15.00	Jan. 1, 1990
16 Parts:		
0-149	6.00	Jan. 1, 1990
150-999	14.00	Jan. 1, 1990
1000-End	20.00	Jan. 1, 1990
17 Parts:		
1-199	15.00	Apr. 1, 1989
200-239	16.00	Apr. 1, 1990
240-End	23.00	Apr. 1, 1990
18 Parts:		
*1-149	16.00	Apr. 1, 1990
150-279	16.00	Apr. 1, 1989
280-399	14.00	Apr. 1, 1990
400-End	9.50	Apr. 1, 1990
19 Parts:		
1-199	28.00	Apr. 1, 1989
*200-End	9.50	Apr. 1, 1990
20 Parts:		
*1-399	14.00	Apr. 1, 1990
400-499	24.00	Apr. 1, 1989
500-End	28.00	Apr. 1, 1989
21 Parts:		
1-99	13.00	Apr. 1, 1989
100-169	15.00	Apr. 1, 1990
170-199	17.00	Apr. 1, 1989
*200-299	5.50	Apr. 1, 1990
300-499	28.00	Apr. 1, 1989
500-599	21.00	Apr. 1, 1989
600-799	8.00	Apr. 1, 1989
800-1299	17.00	Apr. 1, 1989
1300-End	6.50	Apr. 1, 1989
22 Parts:		
1-299	22.00	Apr. 1, 1989
300-End	17.00	Apr. 1, 1989
23	17.00	Apr. 1, 1990
24 Parts:		
0-199	20.00	Apr. 1, 1990
200-499	28.00	Apr. 1, 1989
*500-699	13.00	Apr. 1, 1990
700-1699	23.00	Apr. 1, 1989
1700-End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1989
26 Parts:		
*§§ 1.0-1-1.60	15.00	Apr. 1, 1990
§§ 1.61-1.169	25.00	Apr. 1, 1989
*§§ 1.170-1.300	18.00	Apr. 1, 1990
§§ 1.301-1.400	17.00	Apr. 1, 1990
*§§ 1.401-1.500	29.00	Apr. 1, 1990
§§ 1.501-1.640	16.00	^a Apr. 1, 1989
*§§ 1.641-1.850	19.00	Apr. 1, 1990
§§ 1.851-1.1000	31.00	Apr. 1, 1989
§§ 1.1001-1.1400	18.00	Apr. 1, 1990
§§ 1.1401-End	23.00	Apr. 1, 1989
2-29	21.00	Apr. 1, 1990
30-39	14.00	Apr. 1, 1989
40-49	13.00	^a Apr. 1, 1989
50-299	16.00	^a Apr. 1, 1989
300-499	17.00	Apr. 1, 1990
500-599	6.00	Apr. 1, 1990
600-End	6.50	Apr. 1, 1990
27 Parts:		
1-199	24.00	Apr. 1, 1989
*200-End	14.00	Apr. 1, 1990
28	27.00	July 1, 1989
29 Parts:		
0-99	17.00	July 1, 1989

Title	Price	Revision Date	Title	Price	Revision Date
100-499	7.50	July 1, 1989	42 Parts:		
500-899	26.00	July 1, 1989	1-60	16.00	Oct. 1, 1989
900-1899	12.00	July 1, 1989	61-399	6.50	Oct. 1, 1989
1900-1910 (§§ 1901.1 to 1910.441)	24.00	July 1, 1989	400-429	22.00	Oct. 1, 1989
1910 (§§ 1910.1000 to end)	13.00	July 1, 1989	430-End	24.00	Oct. 1, 1989
1911-1925	9.00	July 1, 1989	43 Parts:		
1926	11.00	July 1, 1989	1-999	19.00	Oct. 1, 1989
1927-End	25.00	July 1, 1989	1000-3999	26.00	Oct. 1, 1989
30 Parts:			4000-End	12.00	Oct. 1, 1989
0-199	21.00	July 1, 1989	44	22.00	Oct. 1, 1989
200-699	14.00	July 1, 1989	45 Parts:		
700-End	20.00	July 1, 1989	1-199	16.00	Oct. 1, 1989
31 Parts:			200-499	12.00	Oct. 1, 1989
0-199	14.00	July 1, 1989	500-1199	24.00	Oct. 1, 1989
200-End	18.00	July 1, 1989	1200-End	18.00	Oct. 1, 1989
32 Parts:			46 Parts:		
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630-699	13.00	July 1, 1989	166-199	14.00	Oct. 1, 1989
700-799	17.00	July 1, 1989	200-499	20.00	Oct. 1, 1989
800-End	19.00	July 1, 1989	500-End	11.00	Oct. 1, 1989
33 Parts:			47 Parts:		
1-199	30.00	July 1, 1989	0-19	18.00	Oct. 1, 1989
200-End	20.00	July 1, 1989	20-39	18.00	Oct. 1, 1989
34 Parts:			40-69	9.50	Oct. 1, 1989
1-299	22.00	Nov. 1, 1989	70-79	18.00	Oct. 1, 1989
300-399	14.00	Nov. 1, 1989	80-End	20.00	Oct. 1, 1989
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36 Parts:			1 (Parts 52-99)	18.00	Oct. 1, 1989
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37	14.00	July 1, 1989	3-6	19.00	Oct. 1, 1989
38 Parts:			7-14	25.00	Oct. 1, 1989
0-17	24.00	Sept. 1, 1989	15-End	27.00	Oct. 1, 1989
18-End	21.00	Sept. 1, 1989	49 Parts:		
39	14.00	July 1, 1989	1-99	14.00	Oct. 1, 1989
40 Parts:			100-177	28.00	Oct. 1, 1989
1-51	25.00	July 1, 1989	178-199	22.00	Oct. 1, 1989
52	25.00	July 1, 1989	200-399	20.00	Oct. 1, 1989
53-60	29.00	July 1, 1989	400-999	25.00	Oct. 1, 1989
61-80	11.00	July 1, 1989	1000-1199	18.00	Oct. 1, 1989
81-85	11.00	July 1, 1989	1200-End	19.00	Oct. 1, 1989
86-99	25.00	July 1, 1989	50 Parts:		
100-149	27.00	July 1, 1989	1-199	18.00	Oct. 1, 1989
150-189	21.00	July 1, 1989	200-599	15.00	Oct. 1, 1989
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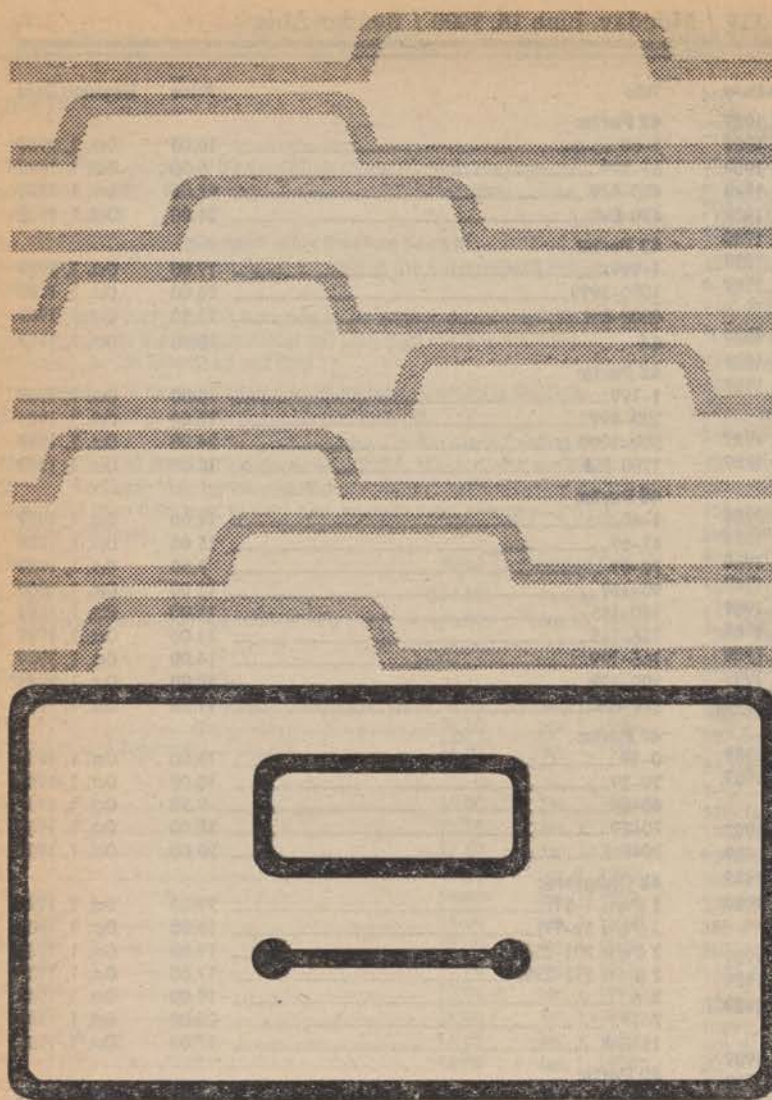
¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

³ No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁵ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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SUPPLEMENT: Revised January 1, 1990

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